

# Foreword

The face of hydropower is changing. Smaller projects with minimal environmental impacts, such as those within city water systems, irrigation channels, or at existing water reservoirs, are joining the energy mix in Oregon as part of a more sustainable future. These projects are bringing with them hydropower owners and developers who are new to the permitting and licensing processes.

Energy Trust recognizes the value and potential of Oregon's untapped hydropower resources and provides assistance to eligible project proponents to help move their ideas from concept to completion. Through our work we see often the challenges that project developers face in attempting to secure the necessary hydropower permits from multiple federal and state agencies.

For first time developers, the complex permitting processes for hydropower projects can seem especially daunting. There are two guidebooks: one for federal permitting processes and one for Oregon permitting processes. These have been written for both new and experienced developers and are intended to serve as a roadmap to state and federal permitting requirements.

Securing the necessary permits for a hydropower project takes patience, time, and a positive, collaborative attitude towards working with state and federal officials. These guidebooks cannot change the level of complexity of the permitting processes, and they are no substitute for expert advice, but they can be used to create a set of reasonable expectations about what it will take to successfully develop a project.

Our hope is that these tools lead to an improved understanding of the permitting process and to thorough applications which can be more quickly processed by the appropriate federal and state agencies.

Betsy Kauffman and Jed Jorgensen  
Energy Trust of Oregon  
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# 1 INTRODUCTION

Development of a hydroelectric facility requires licensing at both the federal and state levels. For newcomers to the licensing process, it can seem overwhelming and difficult to navigate. To assist new developers in becoming familiar with the hydroelectric project licensing process, Energy Trust has prepared a set of guidebooks.

This guidebook provides small hydropower project developers with the information needed to determine which licensing processes are applicable to their projects at the federal level, and then provides step-by-step summaries of the processes involved with obtaining exemptions from licensing at the federal level.

This guidebook starts with an overview of eligibility requirements for pursuing an exemption from licensing at the federal level, as many of the smaller projects supported by Energy Trust are likely to qualify for these exemptions.

Each section of the guidebook provides the reader with a high-level summary of eligibility requirements, as well as a summary of important reference documents. Eligibility criteria are illustrated in flow charts and supplemented with brief explanations. Another important feature of the guidebook is its citations. By citing specific definitions and source documents, the reader can save time by going straight to the relevant materials to seek clarification on a particular point rather having to sift through many documents.

This guidebook is intended to provide an introductory overview of eligibility requirements. It is not a substitute for expert advice or official federal and state documents. Regulations can change frequently; project developers must consult with professionals to ensure compliance with current regulations. Those interested in developing hydroelectric facilities should consult federal and state documents for complete detail and obtain legal advice as necessary. Energy Trust does not assume responsibility for any damages or other liability whatsoever (including any consequential damages) as a result of using this guide.

## 2 OVERVIEW OF ELIGIBILITY FOR EXEMPTIONS FROM FERC LICENSING

The Federal Energy Regulatory Commission (FERC) has authority over hydroelectric facility licensing at the federal level. Obtaining a FERC **license** is a multi-year process involving comprehensive environmental analysis and coordination with several federal and state agencies. Under certain conditions, applicants may be eligible for an **exemption** from FERC licensing. The two exemption categories are for: 1) facilities less than 5 MW; and 2) facilities adding hydroelectric generation to an existing conduit.<sup>1</sup> Specifics regarding these two conditions are provided below.

Those eligible for an exemption from licensing must go through an application process similar to that of a license applicant. However, the exemption application timeline is much shorter (as little as six months under ideal circumstances), and the process typically requires far less intensive environmental investigation than would be needed for a license application. In addition, exemptions do not expire, unlike licenses, which are issued in 30- to 50-year terms.

A handful of valuable resources are referenced frequently throughout this document. Project developers and advisors are encouraged to obtain copies of these documents; a review of the documents will likely be necessary to confirm project eligibility, and the documents will also be important for clarifying requirements related to the application process going forward.

- [\*Handbook for Hydroelectric Project Licensing and 5 MW Exemptions from Licensing \(“Licensing Handbook”\)\*](#). FERC’s Licensing Handbook, issued in 2004, includes detailed explanations of eligibility and requirements associated with the federal licensing process for hydroelectric facilities. The document also includes helpful citations and, as an appendix, Part 1 of the Federal Power Act. The Federal Power Act granted FERC the authority to license non-federal hydroelectric projects and associated regulations guide the licensing and exemption processes.<sup>2</sup>
- [\*Hydroelectric Project Handbook for Filings Other Than Licenses and Exemptions\*](#). This handbook, issued in 2001, includes detailed information on how to obtain a Conduit Exemption.
- [\*U.S. Code of Federal Regulations, Title 18: Conservation of Power and Water Resources, Subchapter B\*](#) (18 CFR Subchapter B). These are the regulations that implement the Federal Power Act. Both FERC handbooks referenced above, as well as this guidebook, are designed to help developers and others identify and understand relevant sections of the regulations.

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<sup>1</sup> A *conduit* is a tunnel, canal, pipeline, aqueduct, flume, ditch, or any similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity. 18 CFR 4.30 (b)(2).

<sup>2</sup> In 1920, Congress passed the Federal Water Power Act. The law focused on hydroelectric project coordination and established the Federal Power Commission (FPC) to oversee hydroelectric project activity. The Act was later amended and renamed the Federal Power Act. The FPC’s regulatory jurisdiction was expanded to include all interstate transmission and sale of electricity, and it was renamed the Federal Energy Regulatory Commission (FERC).

Citations provided in the following sections will help you to efficiently navigate these documents. Information and links to relevant documents regarding the FERC licensing and exemption processes are on FERC's website ([www.ferc.gov/industries/hydropower](http://www.ferc.gov/industries/hydropower)). FERC staff are also available to provide advice (1-866-914-2849 or [smallhydro@ferc.gov](mailto:smallhydro@ferc.gov)).

## 2.1 What Projects Must File for License or an Exemption from Licensing?

Either a FERC license or an exemption from licensing is required to construct, operate, or maintain a non-federal hydroelectric project that meets any one of the following conditions:<sup>3</sup>

- Is located on navigable waters of the United States;<sup>4</sup>
- Utilizes a U.S. government dam;
- Utilizes surplus water or water power from a U.S. government dam; or
- Is located on a stream over which Congress has Commerce Clause jurisdiction, and the project affects the interests of interstate or foreign commerce.

Projects that interconnect with the power grid are considered to affect interstate commerce because power can be exported from the state. This is true of both net-metered projects and projects planning to sell power to a utility under a power purchase agreement. In addition, since hydroelectric projects are best located in places with favorable flow characteristics, projects are typically located on navigable waters. Therefore, most hydroelectric projects will be required to file with FERC for either a license or an exemption from licensing.

## 2.2 What Projects Are Eligible for an Exemption from Licensing?

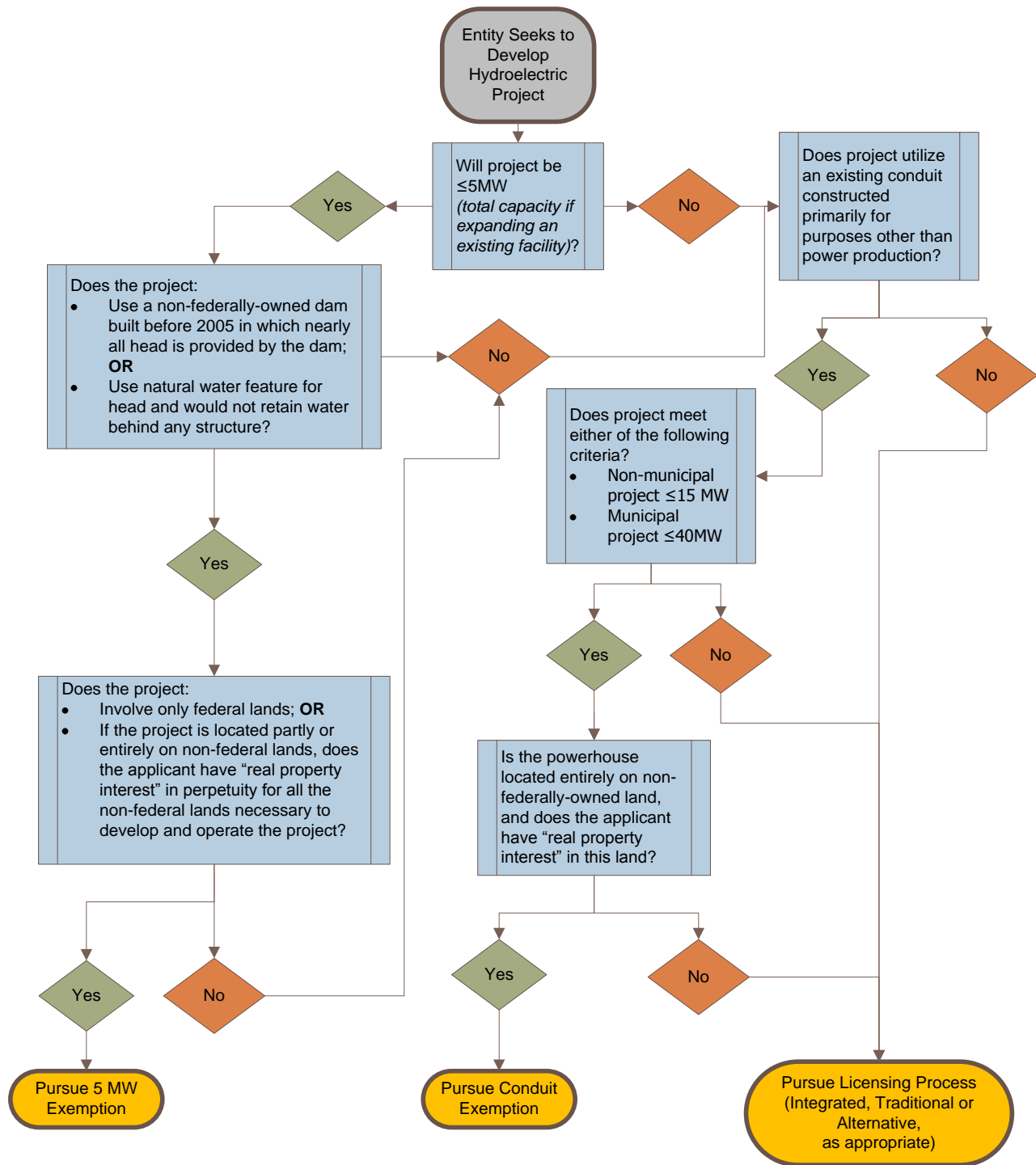
As noted earlier, the two exemption categories are for projects 5 MW or smaller and for projects utilizing existing conduits. Figure 1 provides an overview of the criteria a project must meet to qualify for each of the two exemption categories. The sections following the diagram provide additional information that will assist in determining a project's eligibility and citations to direct readers to the appropriate source documents.

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<sup>3</sup> FERC, *Handbook for Hydroelectric Project Licensing and 5 MW Exemptions from Licensing*, April 2004, p. 2-1; Federal Power Act, Section 4(e).

<sup>4</sup> "Navigable waters" (for which the Commission has jurisdiction under the Commerce Clause) are defined to include "streams or other bodies of water over which Congress has jurisdiction to regulate commerce among foreign nations and among the States" (16 U.S.C. 796). See Digest of Federal Resource Laws of Interest to the U.S. Fish and Wildlife Service, <http://www.fws.gov/laws/lawsdigest/FEDPOWR.HTML>.

**Figure 1. Overview of FERC Licensing Exemption Applicability**



## 2.2.1 5 MW Exemption Eligibility

The 5 MW Exemption applies to projects that will have a total installed capacity no greater than 5 MW upon completion. As summarized in Figure 1, to qualify for a 5 MW Exemption, a project must meet criteria from each of the following two categories:

1. Use a non-federally-owned dam built before July 22, 2005,<sup>5</sup> **OR** use a natural water feature that does not retain water behind any structure for head;
2. Involve only federal lands, **OR** if it involves non-federal lands, the applicant must own or have legal access to those lands. The regulations require the applicant to have “real property interest” in the non-federal lands necessary to develop and operate the project (i.e., ownership, leasehold, rights-of-way, or easements).<sup>6</sup>

The federal regulations governing hydropower project licensing refer to projects qualifying for the 5 MW Exemption as “small hydroelectric power projects.”<sup>7</sup> Definitions for this and other terms relevant to 5 MW Exemption eligibility can be found in the sections 4.30 and 4.31 of the federal regulations governing hydroelectric project licensing.<sup>8</sup>

Some important clarifying points related to the 5 MW Exemption eligibility criteria should be considered by developers. First, projects seeking a 5 MW Exemption cannot use federally owned dams. This includes dams owned by organizations with federal affiliation such as the Bonneville Power Administration. In addition, any dam that is used must be configured such that nearly all of the head is provided by the height of the dam itself; FERC seeks to avoid projects that involve diversions that bypass long stretches of a stream.<sup>9</sup>

Applicants must have “real property interest” in all non-federal land necessary to develop and operate the project at the time they apply for the exemption, including, if applicable, the reservoir that supplies water to the hydroelectric project.<sup>10</sup> It is important to note that an exemption does not grant the power of

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<sup>5</sup> FERC’s *Handbook for Hydroelectric Project Licensing and 5 MW Exemptions from Licensing*, p. 6-1, printed in 2004, references 1977 as the date before which a dam must be built. This date was used because it corresponded with the passage of the Public Utilities Regulatory Policy Act (PURPA), which specified changes relevant to the 5 MW Exemption. However, passage of the Energy Policy Act of 2005 superseded the eligibility provisions related to PURPA, and the regulations implementing the Federal Power Act have been updated to specify July 22, 2005 as the date before which dams must be built to qualify for a 5 MW Exemption.

<sup>6</sup> 18 CFR 4.31 (c) (2). It is possible for projects to involve only non-federal lands as long as the applicant has real property interest in all lands involved in the project.

<sup>7</sup> 18 CFR 4.30 (b)(29)

<sup>8</sup> “Dam” 18 CFR 4.30 (b)(4)(iii), “Existing Dam” 18 CFR 4.30(b)(6)(ii), “Install or Increase” 18 CFR 4.30 (b)(12), “Project” 18 CFR 4.30 (b)(22), “Real Property Interest” 18 CFR 4.30 (b)(26), “Small Hydroelectric Power Project” 18 CFR 4.30 (b)(29), Who may file for an 5 MW exemption from licensing: 18 CFR 4.31 (c) (2).

<sup>9</sup> Personal communication with FERC representative, August 3, 2009.

<sup>10</sup> For the purposes of the 5 MW Exemption, the terms “project” and “dam” are defined to include the impoundment as well as associated structures (i.e. intake, diversion structure, etc.). See definition of “project” (18 CFR 4.30 (b) (22)) and “dam” (18 CFR 4.30 (b) (4) (iii)) as they relate to small hydroelectric power projects.

eminent domain, as a licensee would.<sup>11</sup> In addition, these real property interests must be in perpetuity. If an applicant does not hold clear title to the property, the applicant must hold documentation that they have the right to use the property indefinitely for the purposes of the project. Failure to adequately demonstrate real property interest in the non-federal lands associated with the project site is a common mistake that can hold up processing of 5 MW Exemption applications.<sup>12</sup>

If a 5 MW Exemption applicant plans to utilize an existing dam, the project must not require construction or enlargement of any impoundment structures, although repair and reconstruction of existing structures is allowed.<sup>13</sup>

## 2.2.2 Conduit Exemption Eligibility

As summarized in Figure 1, to qualify for a Conduit Exemption, a project must meet the following criteria:

- Utilize an existing conduit (see definition below) built primarily for purposes other than power production (i.e., for distribution of water for agricultural, municipal, or industrial purposes);<sup>14</sup>
- Be  $\leq 15$  MW if a non-municipal project, or  $\leq 40$  MW if a municipal project;<sup>15</sup> and
- The powerhouse must be located entirely on non-federal lands, and the applicant must have “real property interest” in those lands (i.e., ownership, leasehold, rights-of-way, or easements).<sup>16</sup> The conduit itself may cross federal lands.

FERC refers to a project qualifying for the Conduit Exemption as a “small conduit hydroelectric facility.”<sup>17</sup> A conduit is any tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.<sup>18</sup> Complete definitions for these and other

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<sup>11</sup> FERC’s *Handbook for Hydroelectric Project Licensing and 5 MW Exemptions from Licensing*, p. 6-1.

<sup>12</sup> Personal communication with FERC representatives, May 28, 2009.

<sup>13</sup> 18 CFR 4.30 (b)(6)(ii).

<sup>14</sup> 18 CFR 4.30 (b)(2).

<sup>15</sup> Section 3 (7) of the Federal Power Act defines “municipal” as a “city, county, irrigation district, drainage district, or other political subdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power.” The regulations explain that the 40 MW size limit applies to “municipal water supply projects.” Though this term is not formally defined in the regulations, FERC representatives explain that this would include all normal public works involving water or wastewater. Personal communication with FERC representatives, May 28, 2009.

<sup>16</sup> 18 CFR 4.31 (b) (2) describes the need to hold “real property interest” in the lands “necessary to develop the small conduit hydroelectric facility.” The definition of “small conduit hydroelectric facility” includes “all structures, fixtures, equipment, and lands used and useful in the operation and maintenance of the facility.” However, FERC representatives confirm that, effectively, ownership of only the powerhouse itself is important in the case of a conduit exemption application. Personal communication with FERC representatives, May 28, 2009.

<sup>17</sup> 18 CFR 4.30 (b)(28).

<sup>18</sup> 18 CFR 4.30 (b)(2).

terms relevant to Conduit Exemption eligibility can be found in the sections 4.30 and 4.31 of the federal regulations governing hydroelectric project licensing.<sup>19</sup>

Some important clarifying points related to the Conduit Exemption eligibility criteria should be considered by developers.

- In contrast to the requirements for a 5 MW Exemption involving non-federal land, applicants for a Conduit Exemption need only own the land on which the hydroelectric power generating facility will be located. This includes associated structures and equipment but excludes the conduit on which the hydroelectric facility will be located, as well as the transmission lines associated with the facility. As a result, proving real property interest is generally less of a burden for an applicant seeking a Conduit Exemption than one seeking a 5 MW Exemption.<sup>20</sup>
- The conduit must have been built primarily for purposes other than generating electricity. For example, it could have been built for agricultural, municipal, or industrial purposes.<sup>21</sup>
- The hydroelectric facility cannot be an integral part of a dam, and it cannot require the construction of a new dam for the purpose of power generation.<sup>22</sup>
- Water used for generating power must be discharged into one of the following: a) a conduit; b) a point of agricultural, municipal, or industrial consumption; or c) a natural water body, if there is an additional conduit located downstream that draws upon that same water body (Figure 2).<sup>23</sup>

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<sup>19</sup> “Conduit” 18 CFR 4.30 (b)(2), “Dam” 18 CFR 4.30 (b)(4)(ii), “Real Property Interest” 18 CFR 4.30 (b)(26), “Small Conduit Hydroelectric Facility” 18 CFR 4.30 (b)(28); Who may file for an exemption from licensing for a small conduit hydroelectric facility: 18 CFR 4.31 (b) (2).

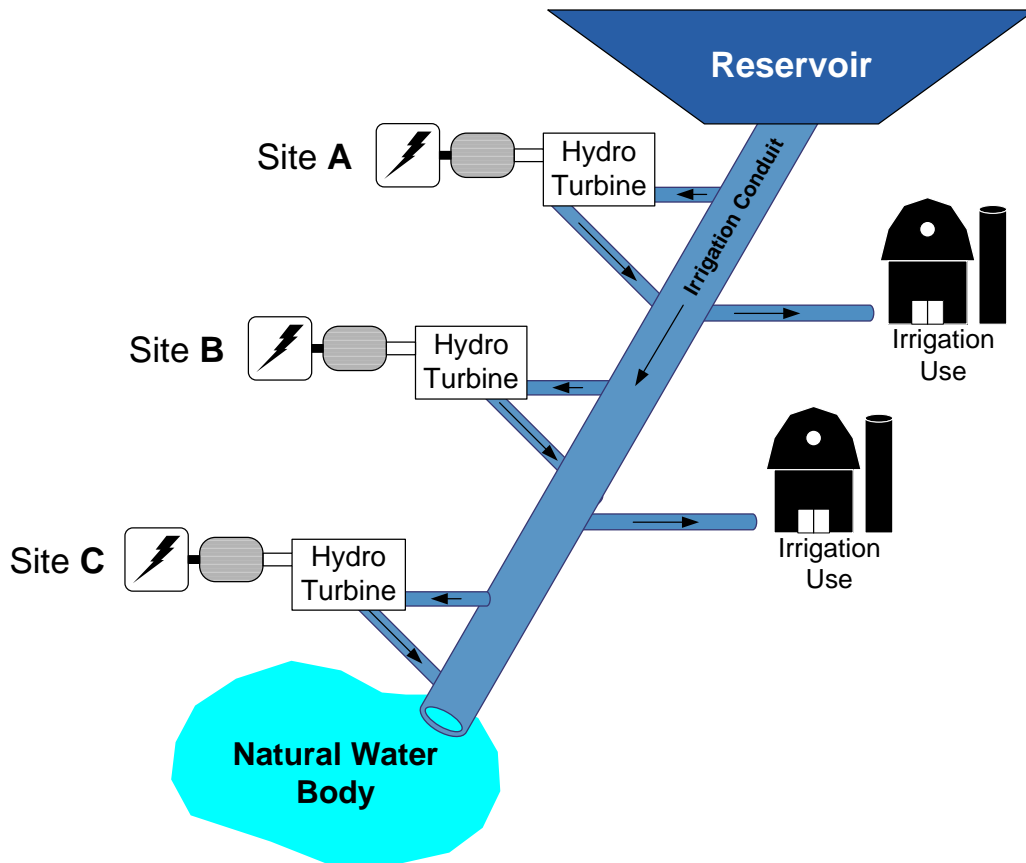
<sup>20</sup> 18 CFR 4.30 (b)(28), and personal communication with FERC representatives, May 28, 2009.

<sup>21</sup> 18 CFR 4.30 (b)(2)(i).

<sup>22</sup> Construction of a dam is allowed if it would have been installed for agricultural, municipal, or industrial purposes regardless of whether the hydroelectric facility were constructed. 18 CFR 4.30 (b)(28).

<sup>23</sup> 18 CFR 4.30 (b)(28)(v). If the facility fulfills all requirements except those pertaining to the location to which the facility’s water is discharged (18 CFR 4.30(b)(28)(v)), the applicant can include a petition for a waiver from the discharge requirement. The petition for a waiver must be filed in accordance with 18 CFR 385.207

**Figure 2. Example of the “Natural Water Body” Discharge Requirement for Conduit Exemption**



Sites A and B meet the Conduit Exemption discharge requirements  
Site C would need to petition for a waiver of the discharge requirements

## 2.3 What Are the Key Differences Between the Processes of Applying for a License Versus Applying for an Exemption?

Both the license and the exemption application processes are designed to document environmental and other characteristics of the project for use in FERC decision-making. They also fulfill FERC’s responsibilities to comply with statutes including the Federal Power Act, National Environmental Policy Act (NEPA), and the Fish and Wildlife Coordination Act. Before discussing the differences between the licensing and exemptions processes, it is important to first understand the basic framework of the licensing process.

The licensing process is broken into two primary phases: 1) Pre-Application Activity; and 2) Post-Filing Activity. The pre-application phase is when issues associated with the proposed project are identified, and environmental studies are conducted, reviewed, and revised based on input from interested resource

agencies and members of the public. Interaction with federal agencies and the public that occurs during this pre-filing stage is referred to as “consultation,” and this consultation plays an important role in defining the scope of analysis, and the terms and conditions that will be placed on a given project development. After this consultation takes place, the actual license application is submitted, initiating the “post-filing activity.”<sup>24</sup>

There are fewer steps involved in the process of applying for an exemption than applying for a license. The scope of the review process is also narrower than for the licensing process as it is intended to support projects with few or no negative environmental impacts. However, applicants for an exemption must follow all of the same application procedures as applicants for a license, with the following exceptions:<sup>25</sup>

- An applicant for an exemption has less time (up to 45 days instead of 90) to correct any deficiencies in the application that might be identified by FERC.<sup>26</sup>
- Applications for the 5 MW Exemption can typically be supported by an Environmental Assessment (EA) and seldom require an Environmental Impact Statement (“EIS,” a more rigorous environmental review process).
- Neither an EA nor an EIS is required for Conduit Exemption applications.<sup>27</sup>
- When a facility secures an exemption from licensing, it is no longer subject to some mandatory conditions of the Federal Power Act that may be onerous to a developer.<sup>28</sup> However, the project will still go through an extensive review process in which fish and wildlife agencies, and other federal and state resource agencies will recommend terms and conditions to attach to the exemption. Unlike a license application, in which fish and wildlife agency recommendations are analyzed by FERC, in the case of an exemption application, implementation of all terms and conditions provided in a timely manner by any fish and wildlife agency is mandatory.<sup>29</sup>

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<sup>24</sup> FERC, *Handbook for Hydroelectric Project Licensing and 5 MW Exemptions from Licensing*, April 2004, p. 2-3.

<sup>25</sup> FERC, *Handbook for Hydroelectric Project Licensing and 5 MW Exemptions from Licensing*, April 2004, p. 6-2.

<sup>26</sup> 18 CFR 4.32(e)(1).

<sup>27</sup> 18 CFR 380.4(a)(14). The Environmental Assessment and Environmental Impact Statement are documents that would be prepared by FERC based on environmental reporting completed by the applicant during the “pre-filing” stage of the application process. They pertain to the National Environmental Policy Act (NEPA) process. Because facilities applying for a Conduit Exemption are smaller in scope, they have less environmental impacts. Therefore, NEPA does not require that an EA or EIS be prepared for these facilities.

<sup>28</sup> This refers to licensing provisions of Part 1 of the Federal Power Act. *FERC Handbook for Hydroelectric Project Licensing and 5 MW Exemptions from Licensing*, April 2004, p. 6-1.

<sup>29</sup> The mandatory nature of fish and wildlife agency recommendations is in 18 CFR 4.34(f)(2). Note also that the regulations define “fish and wildlife agencies” to include the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the state agency in charge of administrative management over fish and wildlife resources of the state in which a proposed hydropower project is located, 18 CFR 4.30(b)(9)(i).

# 3 CONDUIT EXEMPTION INTRODUCTION

Hydroelectric projects utilizing existing conduits can qualify for an exemption from Federal Energy Regulatory Commission (FERC) licensing if they meet certain criteria. Once it is determined that a project meets the criteria necessary to qualify for a Conduit Exemption, it is appropriate to use this section of the guidebook.

This section of the guidebook pulls relevant material from a variety of FERC documents and regulations together in one place with the goal of making the Conduit Exemption application process easier to navigate. The goal of this guidebook is to assist developers of eligible projects in understanding the process as a whole, and to provide a step-by-step summary of the actions the developer will need to take in order to obtain a Conduit Exemption.

This guidebook is not a substitute for expert advice or official federal and state documentation of the process and related regulations. Regulations can change frequently. Project developers must consult with professionals to ensure compliance with current regulations. Those interested in developing hydroelectric facilities should consult federal and state documents (including those listed below) for complete details, and obtain legal advice as necessary. Energy Trust does not assume responsibility for any damages or other liability whatsoever (including any consequential damages) as a result of using this guide.

A few key resources, summarized below, are referenced frequently throughout this document. In addition to reviewing the listed documents, it is important for those seeking a Conduit Exemption to communicate with FERC staff. Communication with FERC is important because the regulatory requirements for exemption applications are ambiguous on some matters, such as timeframes. FERC representatives can help you confirm eligibility for the Conduit Exemption and understand how certain requirements may apply to the specific circumstances of your proposed project. FERC's specialist on issues pertaining to Conduit Exemptions is Robert Bell (Telephone: 202-502-6062; Email: [robert.bell@ferc.gov](mailto:robert.bell@ferc.gov)).

Project developers and advisors are encouraged to obtain copies of the following documents as they may prove important resources for clarifying requirements related to the application process going forward:

- [\*Hydroelectric Project Handbook for Licensing and 5 MW Exemptions from Licensing\*](#) (“Licensing Handbook”). FERC’s Licensing Handbook, issued in 2004, includes detailed explanations of eligibility and requirements associated with the federal licensing process for hydroelectric facilities. The document also includes helpful citations and, as an appendix, Part 1 of the Federal Power Act. The Federal Power Act granted FERC the authority to license non-federal hydroelectric projects and associated regulations guide the licensing and exemption processes.<sup>30</sup>
- [\*Hydroelectric Project Handbook for Filings Other Than Licenses and Exemptions\*](#). This handbook, issued in 2001, includes detailed information on how to obtain a Conduit Exemption.
- [\*U.S. Code of Federal Regulations, Title 18: Conservation of Power and Water Resources, Subchapter B\*](#) (18 CFR Subchapter B). These are the regulations that implement the Federal Power Act. Both FERC handbooks referenced above, as well as this guidebook, are designed to help developers and others identify and understand relevant sections of the regulations. Citations provided in the following sections will help guide you through the relevant sections of these documents. Information and links to documents regarding the FERC licensing and exemption processes are on FERC’s website ([www.ferc.gov/hydropower](http://www.ferc.gov/hydropower)).

In addition, applicants are encouraged to use FERC’s [“eLibrary”](#) to obtain copies of past Conduit Exemption applications and related documents.<sup>31</sup> These documents can serve as a model to developers during the application process. Docket #11845, the Harrisburg Water Supply Powerhouse Project exemption issued in 2000 (“P-11845”), is an example of a Conduit Exemption application that was thorough and complete when submitted, and passed quickly through the approval process.<sup>32</sup> Other example applications are available in PDF form on Energy Trust’s website.

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<sup>30</sup> In 1920, Congress passed the Federal Water Power Act. The law focused on hydroelectric project coordination and established the Federal Power Commission (FPC) to oversee hydroelectric project activity. The Act was later amended and renamed the Federal Power Act. The FPC’s regulatory jurisdiction was expanded to include all interstate transmission and sale of electricity, and it was renamed the Federal Energy Regulatory Commission (FERC).

<sup>31</sup> The eLibrary’s “general search” can be used. Date range must be specified in the search criteria.

<sup>32</sup> Personal communication with FERC representative, May 28, 2009. The Harrisburg project was a particularly fast approval because the second stage of consultation was waived.

# 4 CONDUIT EXEMPTION PROCESS OVERVIEW

An applicant for either a Conduit Exemption or a 5 MW Exemption must follow many of the same steps as an applicant for a FERC license. However, the process of obtaining an exemption involves fewer steps. The scope of the review process is also narrower than for the licensing process since the projects and their associated impacts are generally small. The two main goals of the exemption application process are: 1) to gather and present information about the proposed project, and 2) to consult federal and state resource agencies and members of the public to obtain feedback on the proposed facility.

## 4.1 Overall Licensing Process

Because the exemption application process is effectively a scaled-down version of the full licensing process, it is important to understand the broader licensing process framework. The licensing process is designed to document environmental, engineering, economic, and other characteristics of an applicant's project. The process involves extensive studies and consultation with interested resource agencies and members of the public. The documentation resulting from this process forms the basis for FERC decision-making. It is also used to fulfill FERC's responsibilities to comply with statutes including the Federal Power Act, National Environmental Policy Act (NEPA), and the Fish and Wildlife Coordination Act.

There are three processes available to pursue a license from FERC: Traditional Licensing Process (TLP), Alternative Licensing Process (ALP), and Integrated Licensing Process (ILP). For a license applicant, use of the ILP is standard, and use of the Traditional and Alternative processes requires pre-approval from FERC.<sup>33</sup> However, for exemption applicants, the general framework of the TLP is most commonly used, and it is not necessary to obtain pre-approval from FERC to use this process. Since projects eligible for exemptions are generally fairly straightforward, and present fewer environmental concerns than larger projects, the ILP is generally not appropriate for these projects.

All three licensing processes aim to accomplish the same basic goals of gathering project information and seeking input from resource agencies and the public. However, they differ in terms of the timing and nature of FERC involvement. They also differ in terms of the level of rigor associated with the timelines and the specific steps in the process. The ILP, designed to accommodate projects with complex and numerous environmental impacts, includes a number of prescribed steps with specific timeframes associated with each. In contrast, the TLP and ALP involve fewer steps, and timelines are not as clearly defined as with the ILP. If a project is unlikely to face challenges on fish and wildlife species, recreation or cultural issues, the TLP may be the fastest route.

Regardless of the licensing process a project pursues, the process is broken into two primary phases: 1) Pre-Filing Activity; and 2) Post-Filing Activity. The pre-filing phase is when issues associated with the proposed project are identified, and environmental studies are conducted, reviewed, and revised based on input from interested resource agencies and members of the public. The interaction with federal agencies and the public that occurs during this pre-filing phase is referred to as "consultation." This consultation

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<sup>33</sup> On July 23, 2005, FERC began requiring pre-approval to use either the Traditional or Alternative Licensing Processes. FERC, *Handbook for Hydroelectric Project Licensing and 5 MW Exemptions From Licensing*, April 2004, p. 1-2.

plays an important role in defining the scope of analysis and the terms and conditions that FERC will place on a given project development.

## 4.2 Summary of Conduit Exemptions Process

After completion of the project studies conducted during the pre-filing phase, the actual application is submitted, either for a license or for an exemption. This initiates the “post-filing” phase. It is during this phase that the processes really diverge for applicants seeking a license versus those seeking an exemption. The processes are different depending on whether the applicant seeks a Conduit or a 5 MW Exemption.<sup>34</sup>

One fundamental difference in the post-filing activity phase for license and exemption applicants is the content of the application itself. In addition, the environmental review process and reporting is less extensive for a Conduit Exemption applicant than for license or 5 MW Exemption. While comprehensive environmental reports must be prepared as part of the licensing or 5 MW Exemption application processes in order to comply with the National Environmental Policy Act (NEPA), Conduit Exemption applications are exempt from those requirements.<sup>35</sup> Instead, FERC conducts a simpler environmental analysis for Conduit Exemption applicants. This helps shorten the timeline associated with obtaining a Conduit Exemption.

Figure 3 and Figure 2 provide an overview of the process used to obtain a Conduit Exemption. The process described in detail in the following sections is based on the regulations governing the TLP, because exemption applications typically adhere most closely to the TLP (although there are exceptions). The steps presented have been tailored to reflect elements that are specific to Conduit Exemption applicants.

Timeframes that are clearly relevant to the exemption application process are shown in Figures 1 and 2. For some parts of the application process, no specific timeframes are defined in the regulations. In these cases, the length of the process will vary from one applicant to the next.

If an applicant adheres closely to the requirements described in this guidebook and detailed in the regulations, the applicant will minimize the length of time it takes to obtain a Conduit Exemption. The time to process a Conduit Exemption can be as little as four months under ideal circumstances, but generally takes between six and nine months.

Because timeframes and other details of the Conduit Exemption process are dependent on the circumstances of a given applicant, it is important to communicate with FERC representatives at the very beginning of the process. FERC representatives may be able to help the applicant gauge the level of detail and the number of steps the application process would include for a given project.<sup>36</sup>

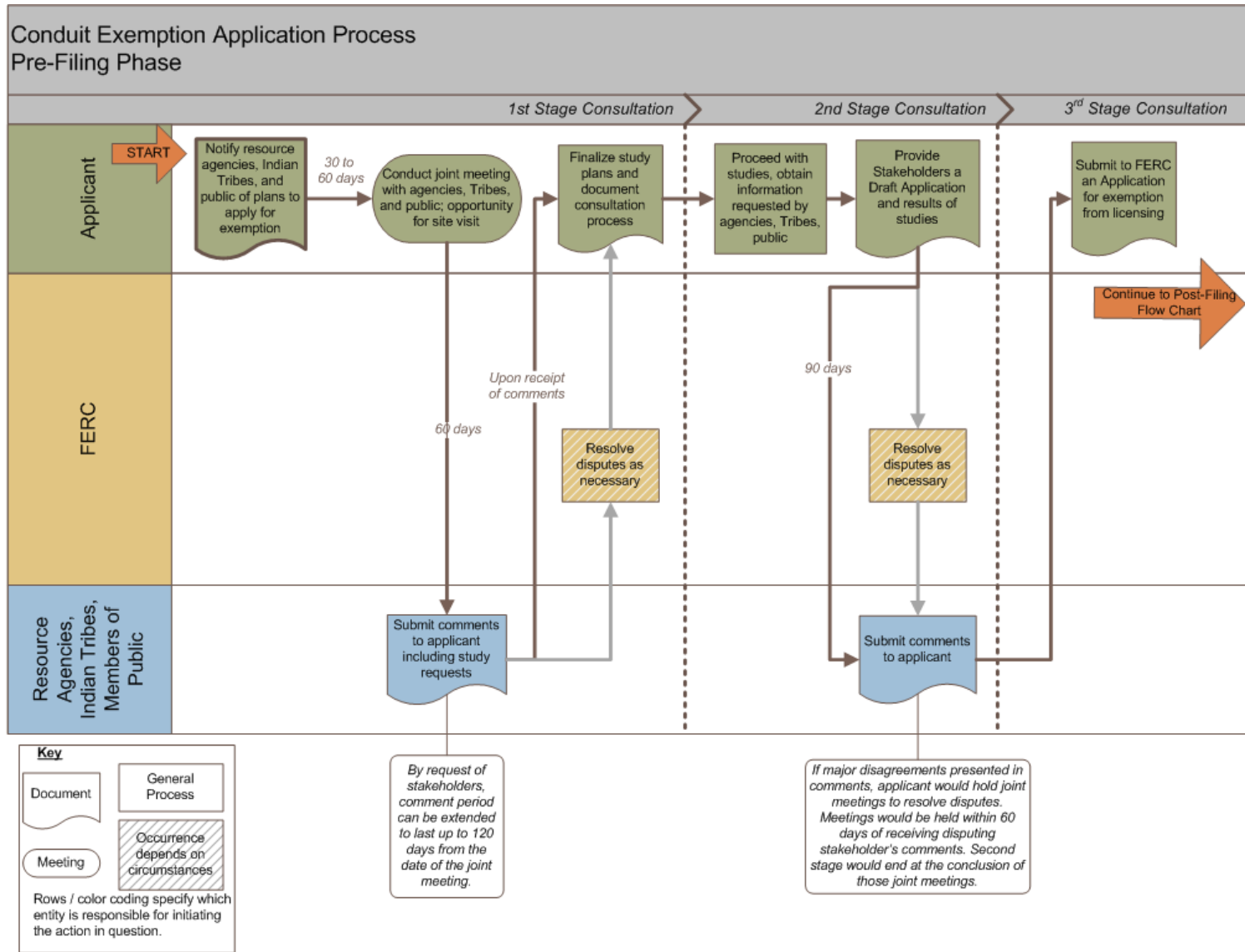
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<sup>34</sup> FERC, *Handbook for Hydroelectric Project Licensing and 5 MW Exemptions From Licensing*, April 2004, p. 2-3.

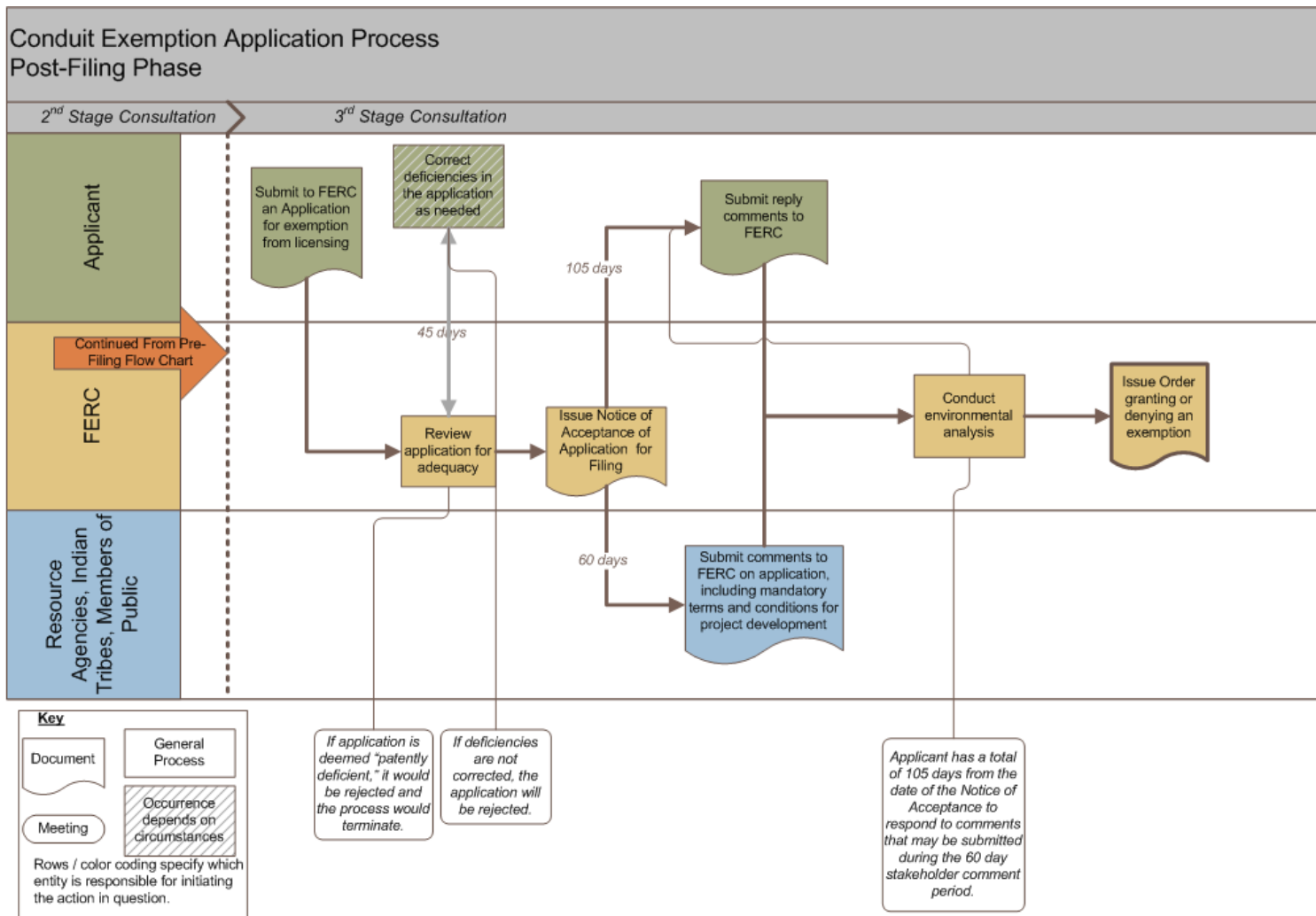
<sup>35</sup> 18 CFR 380.4(a)(14).

<sup>36</sup> 18 CFR 4.32(h).

**Figure 3. Pre-Filing Phase of Conduit Exemption Application Process**



**Figure 4. Post-Filing Phase of Conduit Exemption Application Process**



# 5 CONDUIT EXEMPTION STEP-BY-STEP PROCESS DESCRIPTION

This section provides a step-by-step description of the process of obtaining a Conduit Exemption. As noted earlier, the steps presented here are based on elements of the TLP which apply to Conduit Exemptions and on additional regulatory requirements that apply specifically to Conduit Exemptions. Actual steps required of a given project may vary depending on its unique circumstances.

## 5.1 Pre-Filing Phase

The primary focus of the initial application phase, the “pre-filing phase,” is to establish an understanding of issues associated with the proposed project. Resource agencies, Native American tribes, and members of the public have an opportunity to specify which studies should be conducted to better understand the project and its impacts, and the applicant is responsible for conducting and reporting on the results of the studies.

The process of interacting and gathering feedback from stakeholders is called “consultation.” The consultation process is broken into three stages. The first two stages of consultation are completed during the pre-filing phase. The third stage of consultation begins when the applicant files an application and continues until FERC issues an order granting or denying an exemption.<sup>37</sup>

Throughout the stages of the consultation process that occur during the pre-filing phase, the applicant is responsible for interacting directly with the many participating stakeholders. In some cases, FERC can be called on to resolve disputes. However, FERC generally plays the role of observer during the pre-filing period.

### 5.1.1 First Stage of Consultation

The first stage of consultation focuses on engaging stakeholders in the permitting process and designing the studies that will be performed to support the application. The stage begins when applicants notify stakeholders of their plans to file for an exemption. It ends after stakeholders submit comments on the proposed project and recommend studies to be completed by the applicant.

#### 1. Applicant Notifies Stakeholders of Plans to File for an Exemption

The applicant must contact a host of stakeholders to notify them of plans to file for an exemption from licensing. Those who must be contacted include:<sup>38</sup>

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<sup>37</sup> The regulatory requirements governing the consultation process are detailed in 18 CFR 4.38.

<sup>38</sup> 18 CFR 4.38(a)(1).

- U.S. Fish and Wildlife Service (FWS)
- National Marine Fisheries Service
- National Park Service
- U.S. Environmental Protection Agency
- The federal agency overseeing any federal lands that may be used or affected by the project
- State agencies that oversee natural and resources including fish, wildlife, botanical resources, water quality, coastal zone management, and water resources
- State Historic Preservation Officer and Tribal Historic Preservation Officer
- Local, state, and regional recreation agencies and planning commissions
- Local and state zoning agencies
- Native American Tribes that may be affected by the project
- Landowners that may be affected by the project

For the remainder of this document, these parties are referred to collectively as “stakeholders.” FERC’s website provides a search tool that generates an “initial consultation contact list.”<sup>39</sup> A copy of the search results for Oregon is included in Appendix A. Each applicant should conduct their own search to obtain the most current information available at the time they initiate their application process.

At the beginning of the consultation, the applicant should provide stakeholders with a written summary of the proposed project and notify the stakeholders that the applicant seeks their input as part of the process of filing for an exemption from FERC licensing. These materials can be used later to accompany the actual exemption application, providing documentation of consultation with these stakeholders. These materials are used in lieu of a formal Notice of Intent (NOI) or Pre-Application Document (PAD), which are required for applicants applying for licenses; the NOI and PAD are not required for exemption applications.

The project summary should include the following information:<sup>40</sup>

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<sup>39</sup> Available at: <http://www.ferc.gov/industries/hydropower/enviro/consultlist.aspx>.

<sup>40</sup> 18 CFR 4.38(b)(2).

- Detailed maps showing project boundaries and location of the powerhouse and any additional facilities associated with the project, such as roads and transmission lines;
- A general engineering design of the proposed project, including a description of any proposed diversion of a stream through a canal or penstock;
- A summary of proposed operational characteristics of the project (i.e., whether the plant will be operated manually or automatically, and whether the plant is to be used for peaking);
- Description of the environment likely to be affected by the project, and any plans to minimize environmental impacts;
- Information on stream flow and the water regime, such as the drainage area and monthly flow rates;
- A description of studies proposed to be completed; and
- A statement noting whether or not the applicant plans to pursue benefits available under the Public Utility Regulatory Policy Act of 1978 (PURPA).<sup>41</sup>

## 2. Applicant Conducts a Public Meeting<sup>42</sup>

The applicant must conduct a public meeting to explain the proposed project and what is currently known about its potential environmental impacts. The meeting is also a time to discuss what additional information should be gathered about the project, and which studies should be conducted to more thoroughly understand its likely impacts.

All stakeholders who received notice about the proposed project should be invited to the meeting. The applicant must consult stakeholders ahead of time to determine a convenient time and place for the meeting, and to develop an agenda.

The meeting must be held at least 30 days, but not more than 60 days, after the applicant initially contacted the stakeholders notifying them of plans to file for an exemption. Thus, **applicants should only release the information to the stakeholders (in Step 1) when prepared to conduct the public meeting.**

The applicant must publish a notice about the scheduled meeting in a local newspaper at least 14 days prior to the meeting date. In addition, the applicant must provide FERC with written notice of the meeting and an agenda at least 15 days prior to the meeting date.

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<sup>41</sup> PURPA requires utilities to purchase power from qualifying facilities at guaranteed rates. PURPA benefits are available to certain renewable energy facilities that are unable to sell their power in a competitive market. PURPA contracts are often long-term agreements. It is unlikely that most hydroelectric projects in Oregon would file for PURPA benefits, as they are likely to sell power to utilities under contracts negotiated for the purposes of complying with Oregon's Renewable Portfolio Standard.

<sup>42</sup> 18 CFR 4.38(b)(3).

The meeting must provide an opportunity for visiting the site of the proposed project. In addition, the applicant must have on hand at the meeting copies of the project information initially sent to stakeholders.

### **3. Comments are Submitted to Applicant by Resource Agencies, Native American Tribes, and the Public<sup>43</sup>**

If a stakeholder plans to submit comments, they must be submitted in writing within 60 days of the public meeting. Comments should include the following information:

- The stakeholder’s determination regarding which studies need to be completed by the applicant, including discussion of the basis for this determination;
- Recommendations and rationale regarding the methodology to be used in the studies; and
- A discussion of the stakeholder’s understanding of resource issues associated with the project, as well as the stakeholder’s goals and objectives for protecting those resources.

Stakeholders can contact FERC to request a 60 day extension to the comment period.

### **4. Fish and Wildlife Agencies Provide Cost Estimates for Setting Terms and Conditions**

The U.S. Fish and Wildlife Service is a key player in the consultation process.<sup>44</sup> The agency incurs costs during review process, and it is entitled to reimbursement from the applicant. Within the 60-day comment period described in Step 3, the agency may provide the applicant with a reasonable estimate of the total costs it anticipates it will incur to set mandatory terms and conditions for the proposed project.

The agency may choose to provide an applicant with an updated estimate later in the process, though this is not required unless an agency believes that its most recent estimate will be exceeded by more than 25 %.<sup>45</sup>

In some cases, the agency may choose not to charge the applicant any fees. If this is the case, the agency should provide the applicant with documentation that it plans to waive any fees. If the agency provides neither an estimate of costs or documentation of plans to waive fees during the 60-day comment period, the applicant is not responsible for paying fees to the agency.

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<sup>43</sup> 18 CFR 4.38(b)(5).

<sup>44</sup> 18 CFR 4.30(b)(9) defines fish and wildlife agency as “the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the state agency in charge of administering management over fish and wildlife resources of the state in which a proposed hydropower project is located.” However, according to FERC representatives, the U.S. Fish and Wildlife Service is the only fish and wildlife agency that actively engages in the conduit exemption consultation process. Therefore, it is the only agency from which the applicant should expect to receive cost estimates.

<sup>45</sup> 18 CFR 4.301(b).

## **5. Resolve Disputes as Necessary<sup>46</sup>**

During the first stage of the consultation process, stakeholders may disagree with the applicant about the appropriate studies to be conducted or information to be gathered. If such a disagreement arises, the applicant or stakeholder can submit a written request to the Director of the Office of Energy Projects at FERC for assistance in resolving the dispute. The entity requesting dispute resolution assistance must provide a copy of the request to the party with which they are engaged in the disagreement, as well as other stakeholders that may be affected by the matter. Disputes are resolved by the Director through written correspondence with the applicant and all affected stakeholders during the 60-day comment period.

## **6. First Stage of Consultation Ends<sup>47</sup>**

The first stage of consultation ends when comments from all stakeholders are received by the applicant or 60 days after the public meeting takes place, whichever comes first.<sup>48</sup> This means that if a stakeholder receives comments from every stakeholder that has been contacted before the 60 day comment period is over, there is no need to wait the full 60 days before proceeding to the second stage of consultation.

Stakeholders can file a request to extend the comment period to last up to 120 days from the date of the public meeting. These requests need to be filed with the applicant and the Director of Energy Projects at FERC.

Depending on the environmental impacts of the project, studies may or may not be requested by stakeholders. If studies have been requested, the applicant should have a clear understanding of the studies that need to be conducted during the next stage of consultation in order to ensure a smooth transition to the second stage of consultation. Applicants are not required to submit a formal study plan to FERC or the stakeholders.

If no studies have been requested, the applicant may be able to waive the second and third stages of the consultation process. Continue reading below for more information about this possibility.

### **5.1.2 Second Stage of Consultation**

The second stage of consultation revolves around the completion of studies planned during the first stage and the preparation of a draft application for the exemption.

In some cases, an applicant can request that stakeholders waive the requirement to complete the second and third stages of the consultation process.<sup>49</sup> In order to proceed in this manner, each stakeholder would have to acknowledge in writing that they waive the second- and third-stage consultation requirements. Such cases are limited to those in which a project will clearly have minimal environmental impacts; for

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<sup>46</sup> 18 CFR 4.38(b)(6).

<sup>47</sup> 18 CFR 4.38(b)(7).

<sup>48</sup> This would be extended to 120 days if a stakeholder has requested an extension to the comment period.

<sup>49</sup> 18 CFR 4.38(c)(1).

example, this may apply in cases where there is a closed water supply system with no fish flowing through.<sup>50</sup>

## **1. Applicant Conducts Studies Requested by Stakeholders**

An applicant must conduct the studies, and gather the information about the project that was deemed necessary during the first stage of consultation. In most cases, the studies need to be completed before filing the application for an exemption. However, if a particular study involves data collection that must occur after the facility is operational, the study could be completed after the exemption is issued.<sup>51</sup>

It is possible that a stakeholder could submit a request for the applicant to conduct an additional study after the end of the first stage of consultation. If the stakeholder can present sufficient justification for requiring the additional study, the applicant is expected to complete the requested study. However, the applicant can contact the Director of the Office of Energy Projects at FERC to challenge the need for the additional study.<sup>52</sup>

## **2. Applicant Provides Stakeholders with a Letter Requesting Review and Comment on the Following Materials:**

### *Draft Application*<sup>53</sup>

The applicant must prepare a draft of all exemption application materials and provide copies to all stakeholders. The application materials should respond to any comments and recommendations made by stakeholders during the first stage of consultation. A detailed discussion of the materials necessary to include in a Conduit Exemption application are discussed further in Section 6.

### *Results of Studies and Information Gathering*<sup>54</sup>

The applicant must provide all stakeholders with results of the studies and information gathering efforts. This reporting should include discussion of any proposed measures the applicant will take to minimize environmental impacts.

## **3. Stakeholders Provide Applicant with Comments on Draft Application and Study Results**<sup>55</sup>

Stakeholders have 90 days after receiving the applicant's request for comments to provide any comments on the draft application and study results.

## **4. Resolve Disputes as Necessary**<sup>56</sup>

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<sup>50</sup> 18 CFR 4.38(e)(1). Personal communication with FERC representative, June 2, 2009.

<sup>51</sup> 18 CFR 4.38(c)(1)(iii).

<sup>52</sup> 18 CFR 4.38(c)(2).

<sup>53</sup> 18 CFR 4.38(c)(4)(i).

<sup>54</sup> 18 CFR 4.38(c)(4)(ii).

<sup>55</sup> 18 CFR 4.38(c)(5).

If a stakeholder submits comments indicating a substantial disagreement with the material presented in the draft application or study results, the applicant must hold a meeting within 60 days of receiving those comments. The meeting participants would include the agency that raised the disagreement, as well as other agencies with similar or related areas of interest. The applicant should consult with the stakeholder that presented the disagreement when scheduling the meeting. The applicant must also provide FERC with written notice of the meeting and an agenda at least 15 days before the meeting is scheduled to take place.

After the meeting takes place, the applicant should draft a summary explaining how the disagreement was resolved. This discussion is also included in the exemption application materials.

## **5. Second Stage of Consultation Ends**

If no major disagreements with the draft application materials and study results are presented by stakeholders, the second stage of consultation ends 90 days after the applicant sends draft application materials and study results to stakeholders for comment. Otherwise, this stage of consultation ends after meetings have been held to resolve disagreements by stakeholders.

### **5.1.3 Third Stage of Consultation**

The third stage of consultation begins when the applicant files the application for an exemption. The stage ends when FERC issues a public notice announcing that it has received the application.

#### **1. Applicant Files Application for Exemption**

The content and procedural requirements associated with the exemption application are extensive. These requirements are discussed in detail in Section 6 of this guidebook. If an application is missing any required elements, an explanation of why the material is not included must be added to the application.

## **5.2 Post-Filing Phase**

The post-filing phase begins after FERC receives a conduit exemption application. This phase involves all of the steps necessary for FERC to arrive at a decision to accept or deny the application, including additional stakeholder comment and FERC's environmental analysis of the project.

#### **1. FERC Reviews Application for Adequacy<sup>57</sup>**

Upon receiving application materials from an applicant, FERC reviews the materials to determine whether they adequately comply with all regulatory requirements.<sup>58</sup> FERC's findings are in one of three forms:

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<sup>56</sup> 18 CFR 4.38(c)(6).

<sup>57</sup> 18 CFR 4.32(e).

- The application is found adequate; all necessary information is included, or the explanation for why missing information is not included is sufficient. In this case, the process will proceed to Step 4 (skipping Step 3).
- The application is found “deficient” if the problems found are minor and correctable. In this case, the process will proceed to Step 3.
- The application is found “patently deficient” and is rejected if severe deficiencies exist in the application or if the project is not able to proceed for legal reasons. In this case, the process is terminated.

## **2. Applicant Corrects Deficiencies in the Application As Needed<sup>59</sup>**

If the Director of the Office of Energy Projects at FERC finds that an applicant’s project is eligible for a conduit exemption, but that the application materials are deficient, the applicant will be given 45 days to correct the deficiencies. The corrected application will need to be resubmitted to FERC along with eight copies. If the revised application is not submitted within the specified timeframe, or if the revised application is still found to be deficient, the application will be rejected.

If an application is rejected, it can be resubmitted if the deficiencies are corrected.<sup>60</sup>

## **3. FERC Issues Notice that Application is Accepted for Filing<sup>61</sup>**

If the application complies with all requirements, FERC will notify the applicant, and all agencies participating in the consultation, that the application is “accepted for filing.” The notice will request that stakeholders review the application and file comments and recommendations with FERC. FERC will also publish a notice of the acceptance for filing in a newspaper in each county in which the project will be located.

FERC will assign a project number, and will ask that the applicant send original copies (microfilm) of all maps and drawings prior to project construction.

At this time, FERC may require the applicant to submit additional information, documents, or copies of the application. This would only occur if FERC representatives find that the additional materials would help FERC make an informed decision on the application.

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<sup>58</sup> Although FERC’s review is shown here as “Step 2,” it is not tied sequentially to Step 1. That is, FERC reviews the application upon receiving it, and stakeholders may submit a request for additional studies at any time during the 60-day period following the date the application is filed.

<sup>59</sup> 18 CFR 4.32(e).

<sup>60</sup> 18 CFR 4.32(e)(2)(b)(iii).

<sup>61</sup> 18 CFR 4.32(d); and 18 CFR 4.93(b).

#### **4. Stakeholders Submit Comments / Terms and Conditions<sup>62</sup>**

Any agency or member of the public is free to submit comments on the application within 60 days of receiving FERC's notice that the application has been accepted for filing.

Federal and state fish and wildlife agencies are expected to file comments on all applications. These comments specify terms and conditions that the applicant must meet as it moves forward with project construction and operation. While the application process for a license would include an extensive analysis by FERC of which of the fish and wildlife agency's proposed terms and conditions to accept, all timely recommendations submitted by federal and state fish and wildlife agencies will be accepted and included in the order granting an exemption.<sup>63</sup>

#### **5. Applicant Submits Reply Comments<sup>64</sup>**

The applicant will have 45 days after the end of the 60 day comment period to submit reply comments.

#### **6. FERC Conducts Environmental Analysis**

FERC staff completes an environmental analysis based on the record of facts regarding the proposed facility. This environmental analysis is less formal than the environmental reporting that the National Environmental Policy Act (NEPA) requires FERC to do for license or 5 MW Exemption applications; Conduit Exemption applications may be categorically excluded from NEPA requirements.<sup>65</sup> The rationale for this is that a more comprehensive environmental analysis would have been completed for the site leading up to construction of the actual conduit upon which the proposed hydroelectric facility would be located.<sup>66</sup>

Exhibit E of the application, and other documentation produced through the three-stage consultation, play a central role in informing FERC's environmental analyses conducted for Conduit Exemption applications.

#### **7. FERC Issues Order Granting / Denying Exemption**

FERC issues an order granting or denying the exemption. When granting an exemption, the order will include a standard set of terms and conditions that apply to all Conduit Exemptions.<sup>67</sup> The order will also specify additional terms and conditions, including those submitted by federal and state fish and wildlife agencies.

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<sup>62</sup> 18 CFR 4.34(b).

<sup>63</sup> 18 CFR 4.34(f)(2).

<sup>64</sup> 18 CFR 4.34(b).

<sup>65</sup> 18 CFR 380.4(a)(14) specifies that Conduit Exemptions are exempt from NEPA requirements. Discussion of FERC's environmental analysis is included in: FERC, *Hydroelectric Project Handbook for Filings other than Licenses and Exemptions*, April 2001, p. 3-2.

<sup>66</sup> Personal communication with FERC representative, May 28, 2009.

<sup>67</sup> Standard terms and conditions can be found in Section of 4.94 of the federal regulations governing project licensing and exemptions: 18 CFR 4.94.

Terms and conditions are intended to ensure that the project will be developed in a manner that will minimize environmental impacts, and reflect the best interest of the public.<sup>68</sup>

## **8. If Exemption Is Denied, Applicant May Convert to License Application**

If FERC denies the applicant an exemption, the applicant can convert its exemption application into a license application if:

- Within 30 days of being denied an exemption, the applicant provides FERC with written notice of its intent to convert to a license application;
- Within 90 days of being denied an exemption, the applicant submits any additional information necessary to comply with requirements for a license application;<sup>69</sup> and
- The full set of application materials qualifies the applicant to receive a license for the proposed project.<sup>70</sup>

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<sup>68</sup> 18 CFR 4.93(c).

<sup>69</sup> The additional information would supplement the material already submitted as part of the exemption application. Those materials, together, would comprise the license application. The applicant would not be required to submit a new application.

<sup>70</sup> 18 CFR 4.93(d).

# 6 CONDUIT EXEMPTION APPLICATION REQUIREMENTS

The process of preparing and submitting a FERC exemption application is complex and requires expertise in a number of areas. Applicants are strongly encouraged to secure professional services from an individual or company with experience preparing FERC license or exemption applications.

The procedural requirements associated with submitting a Conduit Exemption application are described first in this section. A discussion of the application content requirements follows. The section concludes with a discussion of specific requirements pertaining to maps and drawings.

## 6.1.1 Procedural Aspects of Filing an Exemption Application

The applicant must submit a complete set of exemption application materials to the Secretary of FERC at FERC's headquarters, along with a letter certifying that copies are being mailed to the stakeholders at the same time. FERC headquarters must receive an original plus eight copies of the application. In addition, the applicant must provide a copy of the application to the Director of FERC's Regional Office in Portland.<sup>71</sup>

Application documents can be submitted using FERC's "[eFiling](#)" system or mailed to:

Kimberly D. Bose, Secretary  
Nathaniel J. Davis, Sr., Deputy Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

FERC's eFiling webpage includes detailed information about the filing procedures, including contact information for technical experts who can assist applicants.

If the application has previously been rejected by FERC for any deficiencies, the applicant must address those deficiencies, and must include a copy of the correspondence from FERC in which the deficiencies were initially identified. A hard copy of the application materials must also be sent to all stakeholders participating in the consultation.<sup>72</sup> The applicant should keep records of the dates upon which application materials are mailed, and the recipients of all the materials.

The applicant must make information about the proposed project, as well as all application materials, available to the public. The application materials must be made available at the applicant's offices, and at a public library, and they must be available for viewing during regular business hours. The materials must be in a form that can be easily reviewed and copied. Members of the public can also request that copies of

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<sup>71</sup> 18 CFR 4.32(b)(2).

<sup>72</sup> 18 CFR 4.38(d)(2).

the materials be sent to them by mail.<sup>73</sup> This enables members of the public to review and copy documents if they wish.

The applicant should delete any sensitive information from the version of the application materials made available to the public. For example, the location of the project site should be withheld if it is situated within any areas of archeological or Native American cultural significance, as disclosure of the location may pose a threat of theft or destruction at the site.

Two times within the first 14 days after the application has been filed, the applicant must publish a notice of its filing in a daily or weekly newspaper in each county in which the project is located. The applicant must provide FERC with documentation proving that this public notice has been issued. The public notice should include the following information:<sup>74</sup>

- The application filing date;
- A brief summary of the project including the type of facility and its location;
- The applicant's name and address;
- The location where members of the public can access the materials; and
- The date by which one must submit a request for any additional scientific studies.

The application must be accompanied by payment of a fee or a bond, along with copies of the most recent cost estimates provided by fish and wildlife agencies. These cost estimates would have been provided during the first stage of the consultation process, and possibly updated by resource agencies later in the process if significant changes to the initial estimates were necessary.<sup>75</sup> Failure to submit either payment of the fee, or a bond, will result in rejection of the application.

If an applicant chooses to submit the application fee along with the application (as opposed to providing a bond), the amount of the fee is 50 percent of the total of all cost estimates provided by fish and wildlife agencies. Agencies will have provided the applicant with updated estimates if any substantial increase in the initial estimates was warranted. Applicants should make sure that the fee submitted with the application is based on the most recent cost estimates provided by fish and wildlife agencies.<sup>76</sup> The remaining 50 percent of the fee is paid upon completion of the project. Payment must be made by check payable to the U.S. Department of Treasury. The check must indicate that payment is for "ECPA fees."

In lieu of paying the fee, an applicant can elect to provide an unlimited term surety bond from a company on the Department of Treasury's list of companies certified to write surety bonds. A bond must be for the full amount of the fish and wildlife agencies' most recent cost estimates.

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<sup>73</sup> 18 CFR 4.32(b)(3) and (4).

<sup>74</sup> 18 CFR 4.32(b)(6).

<sup>75</sup> Relevant fee requirements are specified in 18 CFR 4.301-4.304.

<sup>76</sup> This cost estimates are described in 18 CFR 4.301(b).

## 6.1.2 Content of Exemption Application

While there is no specific application form to complete, the materials that an applicant must include in an exemption application are described in detail in 18 CFR 4.92, a section of the regulations governing FERC licensing and exemptions. In addition, references to materials that must be included in the application appear in 18 CFR 4.32. This section is based on those regulations.

The main elements of the application are the introductory statement, and Exhibits A, E, F, and G.<sup>77</sup> These elements are described below.<sup>78</sup> An application fee must also be submitted along with the application. The fee structure and payment process are described above in Section 6.1.1 of this guidebook.

The information included here is based on requirements specified in the regulations. However, stakeholders may request more detailed information from the applicant if it is needed to provide a sufficient basis for decision-making. Applicants should provide information that is as specific as possible in the initial application. This should help minimize the time spent responding to stakeholder information requests.

### Introductory Statement

The statement must include the following information and must adhere to the following format:

Before the Federal Energy Regulatory Commission

*Application for Exemption for Small Conduit Hydroelectric Facility*

[Name of applicant] applies to the Federal Energy Regulatory Commission for an exemption for the [name of facility], a small conduit hydroelectric facility that meets the requirements of [insert the following language, as appropriate: “§4.30(b)(28) of this subpart” or “§4.30(b)(28) of this subpart, except paragraph (b)(28)(v)”], from certain provisions of Part I of the Federal Power Act.<sup>79</sup>

The location of the facility is:

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<sup>77</sup> The regulations call for exemption applications to include Exhibits A, E, F, and G, but do not call for any Exhibits B, C, or D. Exhibits B, C, and D are required for certain types of license applications (see Licensing Handbook, p. 2-12), but not for exemption applications.

<sup>78</sup> In addition to those components described, applications must include: a) a list identifying Native American tribes affected by the project (18 CFR 4.92(a)(4)); b) a draft tendering notice (18 CFR 4.32(b)(7)); and c) an appendix providing evidence that the applicant holds real property interest in the land necessary to qualify as eligible for the exemption (18 CFR 4.92(a)(3)).

<sup>79</sup> If the facility fulfills all requirements except those pertaining to the location to which the facility’s water is discharged (18 CFR 4.30(b)(28)(v)), the applicant can include a petition for a waiver from the discharge requirement. The petition for a waiver would be filed in accordance with 18 CFR 385.207.

State or Territory: \_\_\_\_\_  
County: \_\_\_\_\_  
Township or nearby town: \_\_\_\_\_

The exact name and business address of each applicant is:

\_\_\_\_\_

The exact name and business address of each person authorized to act as agent for the applicant in this application is:

\_\_\_\_\_

[Name of applicant] is [a citizen of the United States, an association of citizens of the United States, a municipality, State, or a corporation incorporated under the laws of (specify the United States or the state of incorporation), as appropriate].

The provisions of Part I of the Federal Power Act for which exemption is requested are:

[List here all sections or subsections for which exemption is requested.]<sup>80</sup>

[If the facility does not meet the discharge requirements included in FERC's definition of a small conduit hydroelectric facility, add the following sentence: "This application is accompanied by a petition for waiver of §4.30(b)(28)(v), submitted pursuant to 18 CFR 385.207."]

## **Exhibit A: Description of Facility**

Exhibit A must describe the small conduit hydroelectric facility with appropriate references to Exhibits F and G (described below). To the extent feasible, the information in this exhibit may be submitted in tabular form. The following information must be included:

- A brief description of any conduits and associated consumptive water supply facilities, intake facilities, powerhouses, and any other structures associated with the facility.
- The natural sources of water, within close proximity, that supply the conduit on which the hydroelectric facility is located.
- The purposes for which the conduit is used.
- The number of generating units, including auxiliary units, the capacity of each unit, and plans, if any, for future units.
- The type of each hydraulic turbine.
- A description of how the plant is to be operated (manually or automatically), and whether the plant is to be used for peaking.

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<sup>80</sup> The applicant should consult FERC for clarification if it does not wish to apply for an exemption from all sections of Part I of the Federal Power Act.

- Estimations of:
  - The average annual generation in kilowatt hours;
  - The average head of the plant and the methodology used to determine this value;<sup>81</sup>
  - The hydraulic capacity of the plant (flow through the plant) in cubic feet per second; and
  - The average flow passing through the conduit at the plant or point of diversion (using best available data and explaining the sources of the data and the method of calculation); and how much of this flow is available for power generation.
- The planned date for beginning construction of the facility.
- If the hydroelectric facility discharges directly into a natural body of water, the applicant must provide evidence that the relevant discharge requirement has been met. The applicant must demonstrate that a quantity of water equal to or greater than the quantity discharged from the hydroelectric facility is withdrawn from that water body downstream into a conduit that is part of the same water supply system as the conduit on which the hydroelectric facility is located. If these conditions exist, the applicant should discuss with a FERC representative what type of evidence to provide. If the applicant’s facility does not fulfill the discharge requirement, the applicant can submit a petition for waiver of the requirements.<sup>82</sup>
- If the hydroelectric facility discharges directly to a point of agricultural, municipal, or industrial consumption, a description of the nature and location of that point of consumption.
- A description of any construction of a dam that would occur in association with construction of the proposed hydroelectric facility, including a statement describing the surface area and surface elevation of any existing impoundment before and after construction of the dam. If a dam is to be constructed, the applicant must also include evidence that the construction would occur for agricultural, municipal, or industrial consumptive purposes, even if hydroelectric generating facilities were not installed.

## **Exhibit E: Environmental Report**

This exhibit is an Environmental Report. The reporting included in Exhibit E is a product of the pre-filing consultation process described in this guidebook, and detailed in Section 4.38 of the regulations governing FERC licensing and exemptions.<sup>83</sup>

An applicant should consult with FERC staff to gauge the level of detail that should be included in the reporting in Exhibit E. Generally, the level of detail should reflect the scale of the project. Exhibit E must

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<sup>81</sup> The regulations state that an applicant should provide information on the “average head.” However, applicants are encouraged to provide a measured value if possible, as well as the methodology for calculating the head. In general, providing well documented values up front should help minimize the time spent responding to stakeholder data requests later in the process.

<sup>82</sup> This refers to the discharge requirements stated in 18 CFR 4.30(b)(28)(v).

<sup>83</sup> Unless otherwise noted, the Exhibit E requirements described here are drawn from the regulatory requirements outlining the application content requirements for Conduit Exemption applications, 18 CFR 4.92.

include the following information, commensurate with the scope of operations and environmental impact of the facility:

- A description of the facility's environmental setting, including vegetative cover, fish and wildlife resources, water quality and quantity, land and water uses, recreational use, socio-economic conditions, historical and archeological resources, and visual resources. The report must give special attention to endangered or threatened plant and animal species, critical habitats, and sites eligible for or included on the National Register of Historic Places. The applicant may obtain assistance in the preparation of this information from State natural resources agencies, the State historic preservation officer, and from local offices of Federal natural resources agencies. See Appendix A to this guidebook for a list of relevant Oregon resource agencies.
- A description of the expected environmental impacts resulting from the continued operation of an existing small conduit hydroelectric facility, or from the construction and operation of a proposed small conduit hydroelectric facility, including a discussion of the specific measures proposed by the applicant and others to protect and enhance environmental resources, and to mitigate adverse impacts of the facility on them.
- A description of possible alternative sources of new power generation that could be developed in the event that the proposed hydroelectric facility were *not* constructed. This provides a sense of the level of importance of building the facility. For many conduit exemption applicants, the alternative to building the new hydropower facility could be that they continue to purchase retail electricity from the local utility.
- Documentation that the applicant has fulfilled the pre-filing consultation requirements.<sup>84</sup> The regulations state that this documentation must include a summary of the consultation process, including a list of all stakeholders with which the applicant consulted, copies of all correspondence or other proof of consultation with the stakeholders, and minutes or other records from the public meeting. The Exhibit must also include letters from stakeholders containing comments and recommendations regarding the project, notice of any disagreements with stakeholders, etc. If the applicant contacted stakeholders seeking participation in the consultation process and certain stakeholders responded that they had no comment, record of that correspondence should be included as well. For projects with limited environmental impacts, documentation from a lawyer or notary that the stakeholders have been served the required files may suffice.
- Any additional information the applicant considers important.

## Exhibits F and G

Exhibit F is a set of design drawings for the hydroelectric project facilities, and Exhibit G is a map of the project site. Maps and drawings submitted with applications must meet detailed specifications. Specifications pertaining to all maps and drawings, as well as those specific to each exhibit, are described below.

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<sup>84</sup> 18 CFR 4.38(f).

### 6.1.3 Maps and Drawings

Maps and drawings must conform to detailed specifications.<sup>85</sup> A set of overall specifications addresses topics such as the materials on which the maps and drawings must be printed, the formatting requirements the printed documents must adhere to, the scale at which printed copies should be presented, etc. These specifications are summarized first in this section. Additional requirements exist for each of the two exhibits with visual content, Exhibits F and G. These requirements focus primarily on the content of the maps and drawings. They are summarized later in this section.

The requirements for maps and drawings are detailed and rigorous. Applicants should seek the assistance of professionals well versed with Computer Assisted Drawing (CAD) and/or Geographic Information Systems (GIS). This will help ensure submittal of maps and drawings that comply with FERC requirements.

#### Overall Specifications for All Maps and Drawings

All maps and drawings must conform to the specifications provided in 18 CFR 4.39, a section of the regulations governing licensing and exemptions. These specifications are summarized here.

- Each original map or drawing must consist of a print on silver or gelatin 35mm microfilm mounted on Type D (3 1/4" by 7 3/8") aperture cards.
- Full-sized prints of maps and drawings must be on sheets no smaller than 24 by 36 inches and no larger than 28 by 40 inches.
- A space five inches high by seven inches wide must be provided in the lower right hand corner of each sheet. The upper half of this space must bear the title, numerical and graphical scale, and other pertinent information concerning the map or drawing. The lower half of the space must be left clear.
- Exhibit G drawings must be stamped by a registered land surveyor.
- If the drawing size specified in this paragraph limits the scale of structural drawings (Exhibit F drawings) described in paragraph (c) of this section, a smaller scale may be used for those drawings.
- Potential applicants or licensees may be required to file maps or drawings in electronic format as directed by the Commission.
- Each map must have a scale in full-sized prints no smaller than one inch equals 0.5 miles for transmission lines, roads, and similar linear features, and no smaller than one inch equals 1,000 feet for other project features, including the project boundary. Where maps at this scale do not show sufficient detail, large scale maps may be required.
- Maps must show:
  - True and magnetic meridians;
  - State, county, and town lines; and
  - Boundaries of public lands and reservations of the United States,<sup>86</sup> if any.
    - Surveys of public lands may be obtained from the U.S. Bureau of Land Management, or examined in a local land survey office.

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<sup>85</sup> 18 CFR 4.39.

<sup>86</sup> See 16 U.S.C. 796 (1) and (2).

- If a public land survey is available, the maps produced by the applicant must show all lines of that survey that cross the project area, and all official subdivisions of sections for the public lands and reservations, including lots and irregular tracts, as designated on the survey.
  - To the extent that a public land survey is not available for public lands and reservations of the United States, the applicants' maps must show the township lines, and other significant land area demarcations that are recognized by the Federal agency that administers those lands.
- Drawings depicting details of project structures must have a scale in full-sized prints no smaller than:
  - One inch equals 50 feet for plans, elevations, and profiles; and
  - One inch equals 10 feet for sections.
- Each map or drawing must be drawn and lettered to be legible when it is reduced to a print that is 11 inches on its shorter side. Following notification to the applicant that the application has been accepted for filing,<sup>87</sup> prints reduced to that size must be bound in each copy of the application which is required to be submitted to the Commission or provided to any person, agency, or other entity.
- Exhibit F drawings showing project location information and details of project structures must be filed in accordance with FERC's instructions on submission of Critical Energy Infrastructure Information (CEII).<sup>88</sup> If public disclosure of details about a project's location or design would pose a safety risk, an applicant can submit a written request that certain information about the project receive privileged CEII treatment. Under those circumstances, the critical information would be kept in a separate file that would not be made available to the public.

## **Exhibit F: Design Drawings<sup>89</sup>**

Exhibit F is a set of design drawings showing the structures and equipment that will make up the small conduit hydroelectric facility. An applicant can submit the drawings even if they are preliminary in nature, as long as they indicate this in the application materials. Final drawings showing precise plans for the proposed structures would be submitted prior to beginning construction of the project. The final drawings would need a professional engineer's stamp.

The drawings included in this exhibit must show all major project structures in sufficient detail to provide a full understanding of the project, including:

- Plans (overhead view);
- Elevations (front view);
- Profiles (side view); and
- Sections (representations of the equipment as it would appear if cut by a plane, showing its internal structure).

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<sup>87</sup> See 18 CFR 4.31(c).

<sup>88</sup> See 18 CFR 388.112 and 388.113.

<sup>89</sup> 18 CFR 4.41(g).

The application must provide supporting information to demonstrate that existing and proposed structures are safe and adequate to fulfill their stated functions.<sup>90</sup>

The requirements summarized here are from 18 CFR 4.41(g), a section of the regulations governing FERC licensing and exemptions.<sup>91</sup> Applicants should refer to the regulations for complete details.

## **Exhibit G<sup>92</sup>**

Exhibit G is a map or maps of the project. FERC representatives report that the maps submitted along with an exemption application are often insufficient and can delay the exemption application process. Therefore, applicants should pay close attention to the requirements summarized here. These requirements are taken from 18 CFR 4.41(h), a section the regulations governing FERC licensing and exemptions. Applicants should refer to the regulations for complete details.

The map materials must show the project's location relative to major features in the area, as well as details of the project's boundary. Detailed requirements are summarized below. It may be possible to include all required information on one map, though the number of maps necessary to show sufficient detail will depend on the specific circumstances of the project. According to FERC representatives, Conduit Exemption applications typically include two separate maps, one showing the project's location, and one focusing specifically on the project boundary.

The map(s) must show:

(1) *Location of the project and principal features.* The map must show the location of the project as a whole, with reference to the affected stream or other body of water. It should also show any nearby town or other permanent monuments or objects, such as roads, transmission lines, or other structures. The map must also show the relative locations and physical interrelationships of the principal project components. In most cases, a USGS Quad map is used, with the project boundary highlighted.

(2) *Project boundary.* The map must show a project boundary enclosing all project components and other features described in Exhibit A. For a conduit exemption applicant, this boundary would be limited to the hydroelectric powerhouse itself, and any other structures directly related to the power feature. In a map focusing exclusively on the project boundary, it is not necessary to show lands surrounding the powerhouse and the other major project components (i.e., transmission lines). If the boundary is on land covered by a public survey, sufficient references must be shown on the map to allow for accurate platting of the boundary relative to lines of the public land survey. If the lands are not covered by a public

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<sup>90</sup> In the case of 5 MW exemptions or license applicants, the applicant would need to file a the "Supplemental Design Report," as detailed in the regulations, 18 CFR 4.41(g). However, that level of detail is not required of Conduit Exemption applicants.

<sup>91</sup> 18 CFR 4.41(g).

<sup>92</sup> Actual requirements in 18 CFR 4.41(h) have been edited here for simplicity, and to reflect those that are relevant to a Conduit Exemption application. Applicants should consult FERC and seek legal advice to clarify specific requirements as they may relate to the applicant's project.

survey, the best possible representation of the boundary location must be provided, showing known features such as roads, intersections, and streams.<sup>93</sup>

(3) *Non-federal lands*. The map must identify by legal subdivision:<sup>94</sup>

(i) Lands *owned* by the applicant and lands that the applicant plans to acquire; and

(ii) Lands over which the applicant has acquired or plans to acquire *rights* to occupancy and use. This includes *rights* acquired by easement or lease.

The list below presents additional requirements that must be met by the applicant when submitting final map materials. These final maps are submitted after FERC grants a Conduit Exemption, but before the applicant begins construction on the project. FERC's order granting the exemption should detail the requirements for submittal of final documents.

- The applicant must provide the project boundary data in a geo-referenced electronic format—such as ArcView shape files, GeoMedia files, MapInfo files, or any similar format.
- The electronic boundary data must be accurate to  $\pm 40$  feet, in order to comply with the National Map Accuracy Standards for maps at a 1:24,000 scale (the scale of USGS quadrangle maps).
- The electronic Exhibit G data must include a text file describing the map projection used (i.e., UTM, State Plane, Decimal Degrees, etc.) and the map datum (i.e., feet, meters, miles, etc.).
- Three sets of the maps must be submitted on separate compact disks or other appropriate electronic media.
- If more than one sheet is used for the paper maps, the sheets must be numbered consecutively, and each sheet must bear a small insert sketch showing the entire project and indicate that portion of the project depicted on that sheet. Each sheet must contain a minimum of three known reference points, such as a road, intersection, or stream. The latitude and longitude coordinates, or state plane coordinates, of each reference point must be shown.
- If at any time after the application is filed there is any change in the project boundary, the applicant must submit, within 90 days following the completion of project construction, a final Exhibit G showing the extent of such changes.

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<sup>93</sup> Consult FERC and the definition of a small conduit hydroelectric facility to clarify how the boundaries of a specific project would be defined. 18 CFR 4.30(28).

<sup>94</sup> The regulations explain that the map must show both federal and non-federal lands. However, since conduit exemption-eligible sites cannot involve any federal lands, only non-federal lands are listed in this summary.

## **7 CONDUIT EXEMPTION CONCLUSION**

The process of obtaining a Conduit Exemption is less involved than that of obtaining a license or a 5 MW Exemption. This is due in large part to the fact that Conduit Exemption applications are exempt from NEPA requirements and, therefore, involve only limited environmental reporting during the post-filing phase. Nonetheless, the Conduit Exemption application process is still complex and requires close coordination with stakeholders and FERC representatives.

As noted earlier, Conduit Exemption applications typically take about six to nine months to process. If applicants adhere to the requirements described in this guidebook and in the regulations, the duration of the application process can be minimized. Close coordination with FERC staff and stakeholders will also help limit the length of time it takes to process an application.

# 8 5MW EXEMPTION INTRODUCTION

Hydroelectric projects with a generating capacity of 5 MW or less can qualify for an exemption from Federal Energy Regulatory Commission (FERC) licensing if they meet certain criteria. Once it is determined that a project meets the criteria necessary to qualify for a 5 MW Exemption, it is appropriate to use this section of the guidebook.

This section of the guidebook pulls relevant material from a variety of FERC documents and regulations together in one place with the goal of making the 5 MW Exemption application process easier to navigate. The goal of this guidebook is to assist developers of eligible projects in understanding the process as a whole, and to provide a step-by-step summary of the actions the developer will need to take in order to obtain a 5 MW Exemption.

This guidebook is not a substitute for expert advice or official federal and state documentation of the process and related regulations. Regulations can change frequently. Project developers must consult with professionals to ensure compliance with current regulations. Those interested in developing hydroelectric facilities should consult federal and state documents (including those listed below) for complete details, and obtain legal advice as necessary. Energy Trust does not assume responsibility for any damages or other liability whatsoever (including any consequential damages) as a result of using this guide.

A few key resources, summarized below, are referenced frequently throughout this document. In addition to reviewing the listed documents, it is important for those seeking a 5 MW Exemption to communicate with FERC staff. Communication with FERC is important because the regulatory requirements for exemption applications are ambiguous on some matters. FERC representatives can help you confirm eligibility for the 5 MW Exemption and understand how certain requirements may apply to the specific circumstances of your proposed project. FERC's specialist on issues pertaining to 5 MW Exemptions is Edward Abrams (Telephone: 202-502-8773; Email: [edward.abrams@ferc.gov](mailto:edward.abrams@ferc.gov)). Potential applicants can also contact FERC regarding 5 MW Exemption matters at:

Telephone: 1-866-914-2849

Email: [smallhydro@ferc.gov](mailto:smallhydro@ferc.gov)

Project developers and advisors are encouraged to obtain copies of the following documents as they may prove important resources for clarifying requirements related to the application process going forward:

- [\*Hydroelectric Project Handbook for Licensing and 5 MW Exemptions from Licensing\*](#) (“Licensing Handbook”). FERC’s Licensing Handbook, issued in 2004, includes detailed explanations of eligibility and requirements associated with the federal licensing process for hydroelectric facilities. The document also includes helpful citations and, as an appendix, Part 1 of the Federal Power Act. The Federal Power Act granted FERC the authority to license non-federal hydroelectric projects and associated regulations to guide the licensing and exemption processes.<sup>95</sup>
- [\*U.S. Code of Federal Regulations, Title 18: Conservation of Power and Water Resources, Subchapter B\*](#) (18 CFR Subchapter B). These are the regulations that implement the Federal Power Act. Both FERC handbooks referenced above, as well as this guidebook, are designed to help developers and others identify and understand relevant sections of the regulations. Citations provided in the following sections will help guide you through the relevant sections of these documents. Information and links to documents regarding the FERC licensing and exemption processes are on FERC’s website ([www.ferc.gov/hydropower](http://www.ferc.gov/hydropower)).

In addition, applicants are encouraged to use FERC’s [“eLibrary”](#) to obtain copies of past 5 MW Exemption applications and related documents.<sup>96</sup> These documents can serve as a model to developers during the application process. Docket #12629, F&B Wood Corporation’s Corriveau Hydro Project exemption issued in 2006 (“P-12629”), is an example of a 5 MW Exemption application that was thorough and complete when submitted, and passed quickly through the approval process.<sup>97</sup>

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<sup>95</sup> In 1920, Congress passed the Federal Water Power Act. The law focused on hydroelectric project coordination and established the Federal Power Commission (FPC) to oversee hydroelectric project activity. The Act was later amended and renamed the Federal Power Act. The FPC’s regulatory jurisdiction was expanded to include all interstate transmission and sale of electricity, and it was renamed the Federal Energy Regulatory Commission (FERC).

<sup>96</sup> The eLibrary’s “general search” can be used. Date range must be specified in the search criteria.

<sup>97</sup> This project is referenced in FERC’s brochure, “Guide to Developing Small / Low-Impact Hydropower Projects.”

# 9 5MW EXEMPTION PROCESS OVERVIEW

An applicant for either a Conduit Exemption or a 5 MW Exemption must follow many of the same steps as an applicant for a FERC license. However, the process of obtaining an exemption involves fewer steps. The scope of the review process is also narrower than for the licensing process since the projects and their associated impacts are generally small. The two main goals of the exemption application process are: 1) to gather and present information about the proposed project, and 2) to consult federal and state resource agencies and members of the public to obtain feedback on the proposed facility.

## 9.1 Overall Licensing Process

Because the exemption application process is effectively a scaled-down version of the full licensing process, it is important to understand the broader licensing process framework. The licensing process is designed to document environmental, engineering, economic, and other characteristics of an applicant's project. The process involves extensive studies and consultation with interested resource agencies and members of the public. The documentation resulting from this process forms the basis for FERC decision-making. It is also used to fulfill FERC's responsibilities to comply with statutes, including the Federal Power Act, National Environmental Policy Act (NEPA), and the Fish and Wildlife Coordination Act.

There are three processes available to pursue a license from FERC: Traditional Licensing Process (TLP), Alternative Licensing Process (ALP), and Integrated Licensing Process (ILP). For a license applicant, use of the ILP is standard, and use of the Traditional and Alternative processes requires pre-approval from FERC.<sup>98</sup> However, for exemption applicants, the general framework of the TLP is most commonly used, and it is not necessary to obtain pre-approval from FERC to use this process. Because projects eligible for exemptions are generally fairly straightforward, and present fewer environmental concerns than larger projects, the ILP is generally not appropriate for these projects.

All three licensing processes aim to accomplish the same basic goals of gathering project information and seeking input from resource agencies and the public. However, they differ in terms of the timing and nature of FERC involvement. They also differ in terms of the level of rigor associated with the timelines and the specific steps in the process. The ILP, designed to accommodate projects with complex and numerous environmental impacts, includes a number of prescribed steps with specific timeframes associated with each. In contrast, the TLP and ALP involve fewer steps, and timelines are not as clearly defined as with the ILP. If a project is unlikely to face challenges on fish and wildlife species, recreation or cultural issues, the TLP may be the fastest route.

Regardless of the licensing process a project pursues, the process is broken into two primary phases: 1) Pre-Filing Activity; and 2) Post-Filing Activity. The pre-filing phase is when issues associated with the proposed project are identified, and environmental studies are conducted, reviewed, and revised based on input from interested resource agencies and members of the public. The interaction with federal agencies and the public that occurs during this pre-filing phase is referred to as "consultation." This consultation

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<sup>98</sup> On July 23, 2005, FERC began requiring pre-approval to use either the Traditional or Alternative Licensing Processes. FERC, *Handbook for Hydroelectric Project Licensing and 5 MW Exemptions From Licensing*, April 2004, p. 1-2.

plays an important role in defining the scope of analysis, and the terms and conditions that FERC will place on a given project development.

## 9.2 Summary of 5 MW Exemption Process

After completion of the project studies conducted during the pre-filing phase, the actual application is submitted, either for a license or for an exemption. This initiates the “post-filing” phase. It is during this phase that the processes really diverge for applicants seeking a license versus those seeking an exemption. The processes are also different depending on whether the applicant seeks a Conduit or a 5 MW Exemption.<sup>99</sup>

One fundamental difference in the post-filing activity phase for license and exemption applicants is the content of the application itself. In addition, the environmental review process and reporting is less extensive for a Conduit Exemption applicant than for license or 5 MW Exemption.

Figure 3 and Figure 2 provide an overview of the process used to obtain a 5 MW Exemption. The process described in detail in the following sections is based on the regulations governing the TLP because exemption applications typically adhere most closely to the TLP (although there are exceptions). The steps presented have been tailored to reflect elements that are specific to 5 MW Exemption applicants.

Time frames that are clearly relevant to the exemption application process are shown in Figures 1 and 2. For some parts of the application process, no specific timeframes are defined in the regulations. In these cases, the length of the process will vary from one applicant to the next.

If an applicant adheres closely to the requirements described in this guidebook and detailed in the regulations, the applicant will minimize the length of time it takes to obtain a 5 MW Exemption. Twelve to 18 months from the point at which the application is filed is a realistic timeframe for processing a 5 MW Exemption application, assuming the application is thorough and complete.

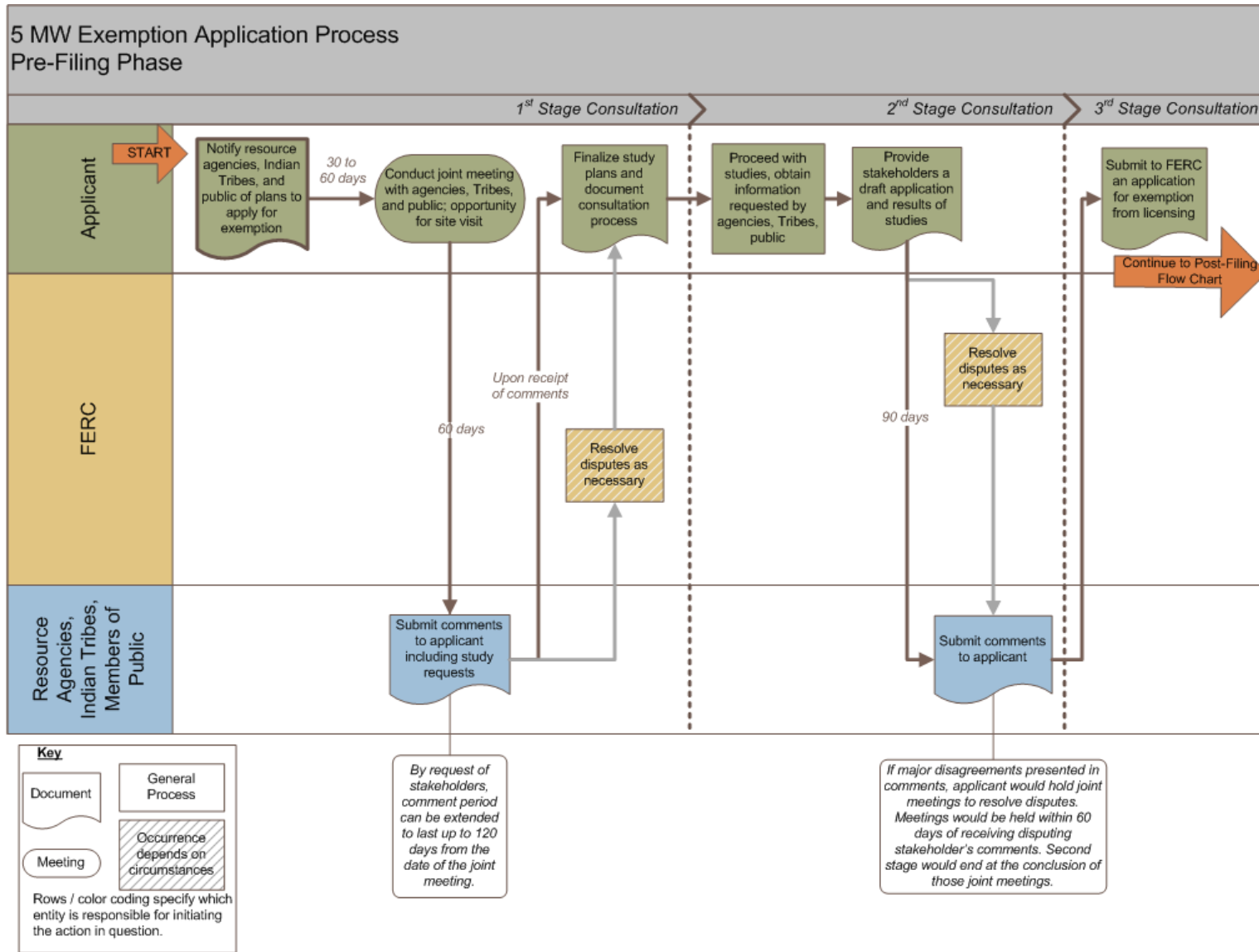
Because timeframes and other details of the 5 MW Exemption process are dependent on the circumstances of a given applicant, it is important to communicate with FERC representatives at the very beginning of the process. FERC representatives may be able to help the applicant gauge the level of detail and the number of steps in the application process for a given project.<sup>100</sup>

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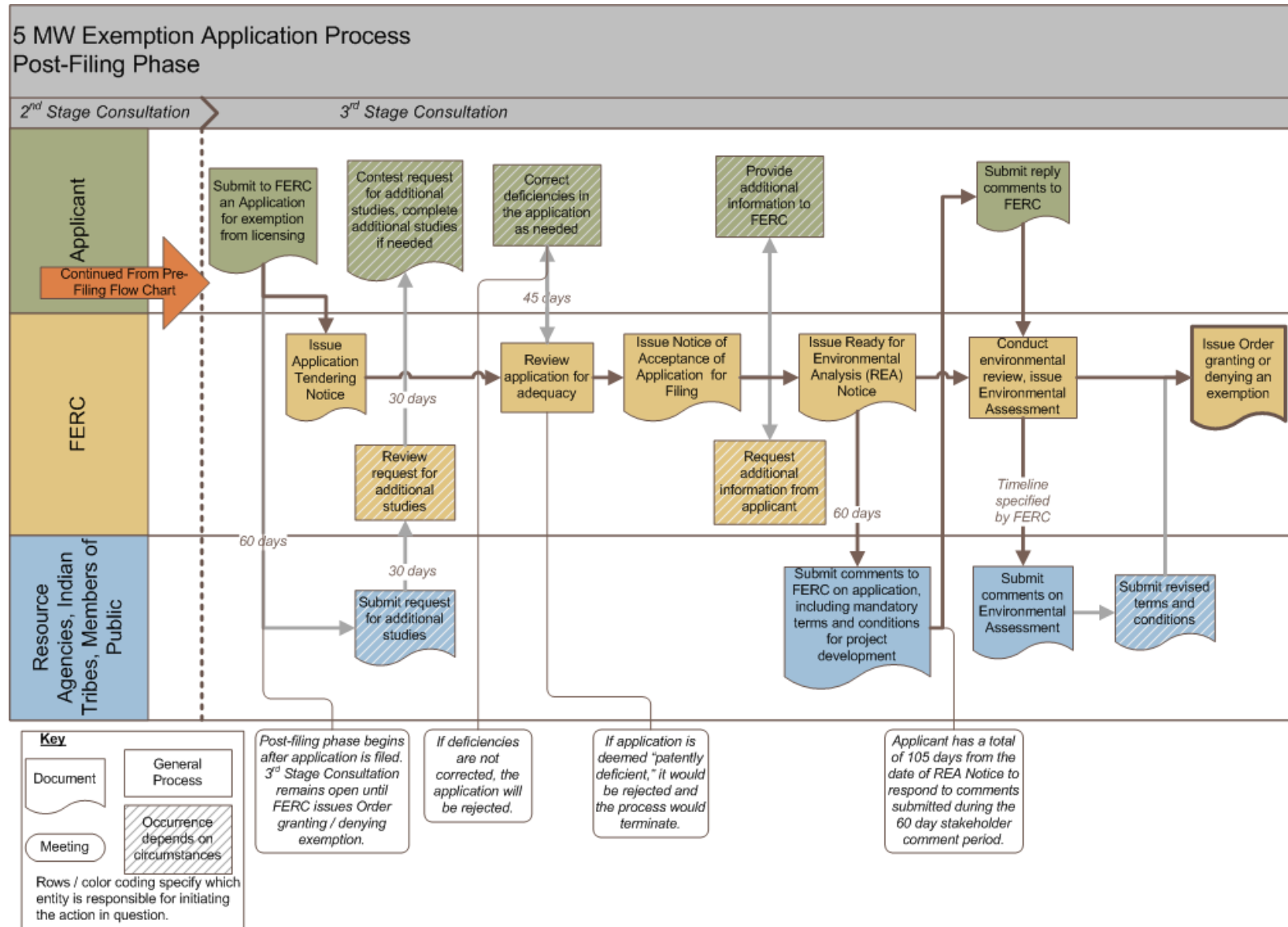
<sup>99</sup> FERC, *Handbook for Hydroelectric Project Licensing and 5 MW Exemptions From Licensing*, April 2004, p. 2-3.

<sup>100</sup> 18 CFR 4.32(h).

**Figure 5. Pre-Filing Phase of 5 MW Exemption Application Process**



**Figure 6. Post-Filing Phase of 5 MW Exemption Application Process**



# 10 5MW EXEMPTION STEP-BY-STEP PROCESS DESCRIPTION

This section provides a step-by-step description of the process of obtaining a 5 MW Exemption. As noted earlier, the steps presented here are based on elements of the TLP which apply to 5 MW Exemptions and on additional regulatory requirements that apply specifically to 5 MW Exemptions. Actual steps required of a given project may vary depending on its unique circumstances.

## 10.1 Pre-Filing Phase

The primary focus of the initial application phase, called the pre-filing phase, is to establish an understanding of issues associated with the proposed project. Resource agencies, Native American tribes, and members of the public have an opportunity to specify which studies should be conducted to better understand the project and its impacts, and the applicant is responsible for conducting and reporting on the results of the studies.

The process of interacting and gathering feedback from stakeholders is called “consultation.” The consultation process is broken into three stages.<sup>101</sup> The first two stages of consultation are completed during the pre-filing phase. The third stage of consultation begins when the applicant files an application and continues until FERC issues a final order granting or denying the exemption.

Throughout the stages of the consultation process that occur during the pre-filing phase, the applicant is responsible for interacting directly with the many participating stakeholders. In some cases, FERC can be called on to resolve disputes. However, FERC generally plays the role of observer during the pre-filing period.

### 10.1.1 First Stage of Consultation

The first stage of consultation focuses on engaging stakeholders in the permitting process and designing the studies that will be performed to support the application. The stage begins when applicants notify stakeholders of their plans to file for an exemption. It ends after stakeholders submit comments on the proposed project and recommend studies to be completed by the applicant.

#### 1. Applicant Notifies Stakeholders of Plans to File for an Exemption

The applicant must contact a host of stakeholders to notify them of plans to file for an exemption from licensing. Those who must be contacted include:<sup>102</sup>

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<sup>101</sup> The regulatory requirements governing the consultation process are detailed in 18 CFR 4.38.

<sup>102</sup> 18 CFR 4.38(a)(1).

- U.S. Fish and Wildlife Service (FWS)
- National Marine Fisheries Service
- National Park Service
- U.S. Environmental Protection Agency
- The federal agency overseeing any federal lands that may be used or affected by the project
- State agencies that oversee natural resources including fish, wildlife, botanical resources, water quality, coastal zone management, and water resources
- State Historic Preservation Officer and Tribal Historic Preservation Officer
- Local, state, and regional recreation agencies and planning commissions
- Local and state zoning agencies
- Native American Tribes that may be affected by the project
- Landowners that may be affected by the project

For the remainder of this document, these parties are referred to collectively as “stakeholders.” FERC’s website provides a search tool that generates an “initial consultation contact list.”<sup>103</sup> A copy of the search results for Oregon is included in Appendix A. Each applicant should conduct their own search to obtain the most current information available at the time they initiate their application process.

At the beginning of the consultation, the applicant should provide stakeholders with a written summary of the proposed project and notify the stakeholders that the applicant seeks their input as part of the process of filing for an exemption from FERC licensing. These materials can be used later to accompany the actual exemption application, providing documentation of consultation with these stakeholders. These materials are used in lieu of a formal Notice of Intent (NOI) or Pre-Application Document (PAD), which are required for applicants applying for licenses; the NOI and PAD are not required for exemption applications.

The project summary should include the following information:<sup>104</sup>

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<sup>103</sup> Available at: <http://www.ferc.gov/industries/hydropower/enviro/consultlist.aspx>.

<sup>104</sup> 18 CFR 4.38(b)(2).

- Detailed maps showing project boundaries and location of the dam, reservoir, powerhouse, and any additional facilities associated with the project, such as roads and transmission lines;
- A general engineering design of the proposed project, including a description of any proposed diversion of a stream through a canal or penstock;
- A summary of proposed operational characteristics of the project (i.e., whether the plant will be operated manually or automatically, and whether the plant is to be used for peaking);
- Description of the environment likely to be affected by the project, and any plans to minimize environmental impacts;
- Information on stream flow and the water regime, such as the drainage area and monthly flow rates;
- A description of studies proposed to be completed; and
- A statement noting whether or not the applicant plans to pursue benefits available under the Public Utility Regulatory Policy Act of 1978 (PURPA).<sup>105</sup>

## 2. Applicant Conducts a Public Meeting<sup>106</sup>

The applicant must conduct a public meeting to explain the proposed project and what is currently known about its potential environmental impacts. The meeting is also a time to discuss what additional information should be gathered about the project, and which studies should be conducted to more thoroughly understand its likely impacts.

All stakeholders who received notice about the proposed project should be invited to the meeting. The applicant must consult stakeholders ahead of time to determine a convenient time and place for the meeting, and to develop an agenda.

The meeting must be held at least 30 days, but not more than 60 days after the applicant initially contacts the stakeholders notifying them of plans to file for an exemption. Thus, **applicants should only release the information to the stakeholders (in Step 1) when prepared to conduct the public meeting.**

The applicant must publish a notice about the scheduled meeting in a local newspaper at least 14 days prior to the meeting date. In addition, the applicant must provide FERC with written notice of the meeting and an agenda at least 15 days prior to the meeting date.

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<sup>105</sup> PURPA requires utilities to purchase power from qualifying facilities at guaranteed rates. PURPA benefits are available to certain renewable energy facilities that are unable to sell their power in a competitive market. PURPA contracts are often long-term agreements. It is unlikely that most hydroelectric projects in Oregon would file for PURPA benefits, as they are likely to sell power to utilities under contracts negotiated for the purposes of complying with Oregon's Renewable Portfolio Standard.

<sup>106</sup> 18 CFR 4.38(b)(3).

The meeting must provide an opportunity for visiting the site of the proposed project. In addition, the applicant must have on hand at the meeting copies of the project information initially sent to stakeholders.

### **3. Comments are Submitted to Applicant by Resource Agencies, Native American Tribes, and the Public<sup>107</sup>**

If a stakeholder plans to submit comments, they must be submitted in writing within 60 days of the public meeting. Comments should include the following information:

- The stakeholder’s determination regarding which studies need to be completed by the applicant, including discussion of the basis for this determination;
- Recommendations and rationale regarding the methodology to be used in the studies; and
- A discussion of the stakeholder’s understanding of resource issues associated with the project, as well as the stakeholder’s goals and objectives for protecting those resources.

Stakeholders can contact FERC to request a 60-day extension to the comment period.

### **4. Fish and Wildlife Agencies Provide Cost Estimates for Setting Terms and Conditions**

State and federal agencies responsible for overseeing fish and wildlife resources are key players in the consultation process.<sup>108</sup> These agencies incur significant costs associated with this review process, and they are entitled to reimbursement from the applicant. Within the 60-day comment period described in Step 3, fish and wildlife agencies must provide an applicant with a reasonable estimate of the total costs the agency anticipates they will incur to set mandatory terms and conditions for the proposed project. An agency may choose to provide an applicant with an updated estimate later in the process, though this is not required unless an agency believes that its most recent estimate will be exceeded by more than 25 percent.<sup>109</sup>

In some cases, an agency may choose not to charge the applicant any fees. If this is the case, the agency should provide the applicant with documentation that it plans to waive any fees. If an agency provides neither an estimate of costs or documentation of plans to waive fees during the 60-day comment period, the applicant is not responsible for paying fees to that agency.

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<sup>107</sup> 18 CFR 4.38(b)(5).

<sup>108</sup> 18 CFR 4.30(b)(9) defines fish and wildlife agency as “the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the state agency in charge of administering management over fish and wildlife resources of the state in which a proposed hydropower project is located.”

<sup>109</sup> 18 CFR 4.301(b).

## 5. Resolve Disputes as Necessary<sup>110</sup>

During the first stage of the consultation process, stakeholders may disagree with the applicant about the appropriate studies to be conducted or information to be gathered. If such a disagreement arises, the applicant or stakeholder can submit a written request to the Director of the Office of Energy Projects at FERC for assistance in resolving the dispute. The entity requesting dispute resolution assistance must provide a copy of the request to the party with which they are engaged in the disagreement, as well as other stakeholders that may be affected by the matter. Disputes are resolved by the Director through written correspondence with the applicant and all affected stakeholders during the 60-day comment period.

## 6. First Stage of Consultation Ends<sup>111</sup>

The first stage of consultation ends when comments from all stakeholders are received by the applicant or 60 days after the public meeting takes place, whichever comes first.<sup>112</sup> This means that if a stakeholder receives comments from every stakeholder that has been contacted before the 60 day comment period is over, there is no need to wait the full 60 days before proceeding to the second stage of consultation.

Stakeholders can file a request to extend the comment period to last up to 120 days from the date of the public meeting. These requests need to be filed with the applicant and the Director of Energy Projects at FERC.

Depending on the environmental impacts of the project, studies may or may not be requested by stakeholders. If studies have been requested, the applicant should have a clear understanding of the studies that need to be conducted during the next stage of consultation in order to ensure a smooth transition to the second stage of consultation. Applicants are not required to submit a formal study plan to FERC or the stakeholders.

If no studies have been requested, the applicant may be able to request that FERC waive the second stage and portions of the third stages of the consultation process. Continue reading below for more information about this possibility.

## 10.1.2 Second Stage of Consultation

The second stage of consultation revolves around the completion of studies planned during the first stage and the preparation of a draft application for the exemption.

In some cases, an applicant can request that FERC waive the requirement to complete the second stage and portions of the third stage of the consultation process.<sup>113</sup> In order to proceed in this manner, each stakeholder would have to agree in writing. Such cases are limited to those in which a project will clearly

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<sup>110</sup> 18 CFR 4.38(b)(6).

<sup>111</sup> 18 CFR 4.38(b)(7).

<sup>112</sup> This would be extended to 120 days if a stakeholder has requested an extension to the comment period.

<sup>113</sup> 18 CFR 4.38(c)(1).

have minimal environmental impacts; for example, this may apply in cases where there is a closed water supply system with no fish flowing through.<sup>114</sup>

## **1. Applicant Conducts Studies Requested by Stakeholders**

An applicant must conduct the studies, and gather the information about the project that was deemed necessary during the first stage of consultation. In most cases, the studies need to be completed before filing the application for an exemption. However, if a particular study involves data collection that must occur after the facility is operational, the study could be completed after the exemption is issued.<sup>115</sup>

It is possible that a stakeholder could submit a request for the applicant to conduct an additional study after the end of the first stage of consultation. If the stakeholder can present sufficient justification for requiring the additional study, the applicant is expected to complete the requested study. However, the applicant can contact the Director of the Office of Energy Projects at FERC to challenge the need for the additional study.<sup>116</sup>

## **2. Applicant Provides Stakeholders with a Letter Requesting Review and Comment on the Following Materials:**

### *Draft Application*<sup>117</sup>

The applicant must prepare a draft of all exemption application materials and provide copies to all stakeholders. The application materials should respond to any comments and recommendations made by stakeholders during the first stage of consultation. A detailed discussion of the materials necessary to include in a 5 MW Exemption application are discussed further in Section 11.

### *Results of Studies and Information Gathering*<sup>118</sup>

The applicant must provide all stakeholders with results of the studies and information gathering efforts. This reporting should include discussion of any proposed measures the applicant will take to minimize environmental impacts.

## **3. Stakeholders Provide Applicant with Comments on Draft Application and Study Results**<sup>119</sup>

Stakeholders have 90 days after receiving the applicant's request for comments to provide any comments on the draft application and study results.

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<sup>114</sup> 18 CFR 4.38(e)(1). Personal communication with FERC representative, June 2, 2009.

<sup>115</sup> 18 CFR 4.38(c)(1)(iii).

<sup>116</sup> 18 CFR 4.38(c)(2).

<sup>117</sup> 18 CFR 4.38(c)(4)(i).

<sup>118</sup> 18 CFR 4.38(c)(4)(ii).

<sup>119</sup> 18 CFR 4.38(c)(5).

## **4. Resolve Disputes as Necessary<sup>120</sup>**

If a stakeholder submits comments indicating a substantial disagreement with the material presented in the draft application or study results, the applicant must hold a meeting within 60 days of receiving those comments. The meeting participants would include the agency that raised the disagreement, as well as other agencies with similar or related areas of interest. The applicant should consult with the stakeholder that presented the disagreement when scheduling the meeting. The applicant must also provide FERC with written notice of the meeting and an agenda at least 15 days before the meeting is scheduled to take place.

After the meeting takes place, the applicant should draft a summary explaining how the disagreement was resolved. This discussion is also included in the exemption application materials.

## **5. Second Stage of Consultation Ends**

If no major disagreements with the draft application materials and study results are presented by stakeholders, the second stage of consultation ends 90 days after the applicant sends draft application materials and study results to stakeholders for comment. Otherwise, this stage of consultation ends after meetings have been held to resolve disagreements by stakeholders.

## **10.1.3 Third Stage of Consultation**

The third stage of consultation begins when the applicant files the application for an exemption. The stage continues through the post-filing phase and does not end until FERC issues an order granting or denying an exemption.

### **1. Applicant Files Application for Exemption**

The content and procedural requirements associated with the exemption application are extensive. These requirements are discussed in detail in Section 11 of this guidebook. If an application is missing any required elements, an explanation of why the material is not included must be added to the application.

## **10.2 Post-Filing Phase**

The post-filing phase begins upon the filing of a completed application. The post-filing phase involves all of the steps necessary for FERC to arrive at a decision to accept or deny the application, including additional stakeholder comment and FERC's environmental analysis of the project.

### **1. FERC Issues a Tendering Notice**

FERC issues a tendering notice to the public within 14 days of receiving the application.<sup>121</sup> The tendering notice announces to the public that FERC has received the application. It provides a brief description of

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<sup>120</sup> 18 CFR 4.38(c)(6).

<sup>121</sup> 18 CFR 4.32(b)(7). Though the regulations do not specify a timeframe for FERC's issuance of the tendering notice, it is FERC practice to issue the notice within 14 days of receiving an application, as noted in FERC's *Handbook for Hydroelectric Project Licensing and 5 MW Exemptions From Licensing*, (p. 4-11).

the project and a preliminary schedule for processing the application. It also notifies stakeholders that they have 60 days to request that the applicant complete any additional studies deemed necessary to inform FERC's analysis of the proposed project. The notice will be published in the Federal Register and local newspapers, and will be sent to participating stakeholders.

## **2. Stakeholders May Request Additional Scientific Studies<sup>122</sup>**

Up to 60 days after an application has been filed, a stakeholder may file a request with FERC calling for the applicant to complete an additional scientific study. The stakeholder must demonstrate that the additional study is necessary in order to provide sufficient data upon which to base the analysis of the application. The stakeholder must also explain why the study was not requested during the pre-filing consultation process.

A copy of the request for additional studies must be provided directly to the applicant by the stakeholder. An applicant can contest the request within 30 days after it has been filed.

An applicant will be required to complete the requested study if FERC finds that the additional study is needed. If this occurs, the applicant's application would be held until the additional study is complete. Notice that the application is ready for environmental analysis (Step 7) and would not be issued by FERC until after all studies and any additional information have been received, reviewed, and found to be adequate.

## **3. FERC Reviews Application for Adequacy<sup>123</sup>**

Upon receiving application materials from an applicant, FERC reviews the materials to determine whether they adequately comply with all regulatory requirements.<sup>124</sup> FERC's findings are in one of three forms:

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<sup>122</sup> 18 CFR 4.32(b)(7).

<sup>123</sup> 18 CFR 4.32(e).

<sup>124</sup> Although FERC's review is shown here as "Step 2," it is not tied sequentially to Step 1. That is, FERC reviews the application upon receiving it, and stakeholders may submit a request for additional studies at any time during the 60 day period following the date the application is filed.

- The application is found adequate; all necessary information is included, or the explanation for why missing information is not included is sufficient. In this case, the process will proceed to Step 4 (skipping Step 3).
- The application is found “deficient” if the problems found are minor and correctable. In this case, the process will proceed to Step 3.
- The application is found “patently deficient” and is rejected if severe deficiencies exist in the application or if the project is not able to proceed for legal reasons. In this case, the process is terminated.

#### **4. Applicant Corrects Deficiencies in the Application As Needed<sup>125</sup>**

If the Director of the Office of Energy Projects at FERC finds that an application is deficient, the applicant will be given 45 days to correct the deficiencies. The corrected application will need to be resubmitted to FERC along with eight copies. If the revised application is not submitted within the specified timeframe, or if the revised application is still found to be deficient, the application will be rejected.

If an application is rejected, it can be resubmitted if the deficiencies are corrected.<sup>126</sup>

#### **5. FERC Issues Notice that Application is Accepted for Filing<sup>127</sup>**

If the application complies with all requirements, FERC will notify the applicant, and all agencies participating in the consultation, that the application is accepted for filing. FERC will also publish a notice of the acceptance for filing in a newspaper in each county in which the project will be located. If the project affects any land owned by the Federal government, FERC will notify the appropriate Federal office.

FERC will assign a project number, and may ask that the applicant send original copies (microfilm) of all maps and drawings. If maps and drawings submitted with the application are deemed sufficient for use in decision-making regarding the project, FERC may not require the applicant to submit original copies of all maps and drawings until after an exemption is granted.

#### **6. FERC Conducts Scoping Process and May Request Additional Information from Applicant<sup>128</sup>**

Depending on the circumstances of the proposed project, FERC may issue a Scoping Document for public comment, then solicit written comments or hold public scoping meetings. The timeframe associated with this step is not clearly defined. However, if FERC chooses to hold a scoping meeting, the Scoping Document would issue the document 30 days prior to holding the meeting.

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<sup>125</sup> 18 CFR 4.32(e).

<sup>126</sup> 18 CFR 4.32(e)(2)(b)(iii).

<sup>127</sup> 18 CFR 4.32(d); and 18 CFR 4.93(b).

<sup>128</sup> FERC, *Handbook for Hydroelectric Project Licensing and 5 MW Exemptions From Licensing*, (p. 2-19 and 4-13).

Based on outcomes of the scoping process, and any requests for additional studies that may have been received by FERC following submittal of the application, FERC may require the applicant to submit additional information, documents, or copies of the application. This would only occur if FERC representatives find that the additional materials would help FERC make an informed decision on the application.<sup>129</sup> FERC would specify a timeframe within which the applicant must provide the additional information.

## **7. FERC Issues “Ready for Environmental Analysis” (REA) Notice<sup>130</sup>**

FERC issues the Ready for Environmental Analysis (REA) notice once it has determined that the applicant has provided all the information necessary to support FERC’s environmental analysis. This would occur after the applicant has completed and submitted reports on any environmental studies requested up to that point. The REA notice will request that stakeholders review the application and file comments with FERC.

## **8. Stakeholders Submit Comments / Terms and Conditions<sup>131</sup>**

Any agency or member of the public is free to submit comments on the application. Comments must be submitted within 60 days of FERC’s issuance of the REA notice.

Federal and state fish and wildlife agencies are expected to file comments on all applications. These comments specify terms and conditions that the applicant must meet as it moves forward with project construction and operation. While the application process for a license would include an extensive analysis by FERC of which of the fish and wildlife agency’s proposed terms and conditions to accept, all timely recommendations submitted by federal and state fish and wildlife agencies will be included in the order granting an exemption.<sup>132</sup>

## **9. Applicant Submits Reply Comments<sup>133</sup>**

The applicant will have 45 days after the end of the 60 day comment period (a total of 105 days from issuance of the REA notice) to submit reply comments. FERC may allow for longer comment or reply periods if a commenter can show just cause for an extension.

## **10. FERC Conducts Environmental Review**

FERC staff completes an environmental analysis based on the record of facts regarding the proposed facility. Proposed projects seeking 5 MW Exemptions are subject to the National Environmental Policy Act (NEPA) process. This means that FERC is required to prepare a report documenting the project’s expected environmental impacts and identifying strategies to minimize and mitigate those impacts.

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<sup>129</sup> 18 CFR 4.32(g).

<sup>130</sup> FERC, *Handbook for Hydroelectric Project Licensing and 5 MW Exemptions From Licensing*, (p. 2-19 and 4-13).

<sup>131</sup> 18 CFR 4.34(b).

<sup>132</sup> 18 CFR 4.34(f)(2).

<sup>133</sup> 18 CFR 4.34(b).

The NEPA review process can take on varying levels of environmental analysis. The extent of environmental analyses will depend on the anticipated environmental impacts associated with a proposed project. Applications for the 5 MW Exemption can typically be supported by an Environmental Assessment (EA) because the projects usually produce minor environmental impacts.<sup>134</sup> FERC typically prepares a single EA for 5 MW Exemption applications; in the event that scoping reveals numerous or controversial environmental issues, FERC staff would prepare both a draft and final EA.<sup>135</sup>

The timeframe associated with FERC's preparation of NEPA documents is not defined.<sup>136</sup> The timeframe for submitting comments on an EA or other environmental document, once completed, would be specified in a notice announcing the availability of the documents. This comment period would be between 30 and 60 days.<sup>137</sup> Since FERC does not typically prepare a draft EA for 5 MW Exemption applications, there is no final EA in which to address comments on the initial EA. Instead, comments on the EA are addressed by FERC in the order issuing the Exemption, as appropriate.<sup>138</sup>

If information presented in an EA or other NEPA document causes a stakeholder to wish to modify the terms and conditions submitted earlier, they must file modified terms and conditions with FERC by the end of the comment period for the NEPA document.

Exhibit E of the application, and other documentation produced through the three-stage consultation, play a central role in informing FERC's environmental assessment conducted for 5 MW Exemption applications.

## **11. FERC Issues Order Granting / Denying Exemption**

FERC issues an order granting or denying the exemption. When granting an exemption, the order will include a standard set of terms and conditions that apply to all 5 MW Exemptions.<sup>139</sup> The order will also specify additional terms and conditions, including those submitted by federal and state fish and wildlife agencies.

Terms and conditions are intended to ensure that the project will be developed in a manner that will minimize environmental impacts, and reflect the best interest of the public.

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<sup>134</sup> If a project is considered "a major Federal action significantly affecting the quality of the human environment," it would require completion of a full Environmental Impact Statement (EIS) (18 CFR 380.6(b)). Preparing an EIS is a lengthier process than completing an EA.

<sup>135</sup> Personal communication with FERC representative, May 28, 2009.

<sup>136</sup> No standard timeframe is prescribed for issuing NEPA documents under the TLP (Traditional Licensing Process, as discussed in Section 9.1). This is the version of the licensing process used here as a frame of reference for discussing the 5 MW Exemption process. Specific timeframes do exist for the ILP (Integrated Licensing Process). FERC, *Handbook for Hydroelectric Project Licensing and 5 MW Exemptions From Licensing*, (p. 2-20).

<sup>137</sup> FERC, *Handbook for Hydroelectric Project Licensing and 5 MW Exemptions From Licensing*, (p. 2-20).

<sup>138</sup> FERC, *Handbook for Hydroelectric Project Licensing and 5 MW Exemptions From Licensing*, (p. 2-20).

<sup>139</sup> Standard terms and conditions can be found in Section of 4.106 of the federal regulations governing project licensing and exemptions: 18 CFR 4.106.

# 11 5MW EXEMPTION APPLICATION REQUIREMENTS

The process of preparing and submitting a FERC exemption application is complex and requires expertise in a number of areas. Applicants are strongly encouraged to secure professional services from an individual or company with experience preparing FERC license or exemption applications.

The procedural requirements associated with submitting a 5 MW Exemption application are described first in this section. A discussion of the application content requirements follows. The section concludes with a discussion of specific requirements pertaining to maps and drawings.

## 11.1.1 Procedural Aspects of Filing an Exemption Application

The applicant must submit a complete set of exemption application materials to the Secretary of FERC at FERC's headquarters, along with a letter certifying that copies are being mailed to the stakeholders at the same time. FERC headquarters must receive an original plus eight copies of the application. In addition, the applicant must provide a copy of the application to the Director of FERC's Regional Office in Portland.<sup>140</sup>

Application documents can be submitted using FERC's "[eFiling](#)" system or mailed to:

Kimberly D. Bose, Secretary  
Nathaniel J. Davis, Sr., Deputy Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

FERC's eFiling webpage includes detailed information about the filing procedures, including contact information for technical experts who can assist applicants.

If the application has previously been rejected by FERC for any deficiencies, the applicant must address those deficiencies, and must include a copy of the correspondence from FERC in which the deficiencies were initially identified. A hard copy of the application materials must also be sent to all stakeholders participating in the consultation.<sup>141</sup> The applicant should keep records of the dates upon which application materials are mailed, and the recipients of all the materials.

The applicant must make information about the proposed project, as well as all application materials, available to the public. The application materials must be made available at the applicant's offices and at a public library, and they must be available for viewing during regular business hours. The materials must be in a form that can be easily reviewed and copied. Members of the public can also request that copies of

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<sup>140</sup> 18 CFR 4.32(b)(2).

<sup>141</sup> 18 CFR 4.38(d)(2).

the materials be sent to them by mail.<sup>142</sup> This enables members of the public to review and copy documents if they wish.

The applicant should delete any sensitive information from the version of the application materials made available to the public. For example, the location of the project site should be withheld if it is situated within any areas of archeological or Native American cultural significance, as disclosure of the location may pose a threat of theft or destruction at the site.

Two times within the first 14 days after the application has been filed, the applicant must publish a notice of its filing in a daily or weekly newspaper in each county in which the project is located. The applicant must provide FERC with documentation proving that this public notice has been issued. The public notice should include the following information:<sup>143</sup>

- The application filing date;
- A brief summary of the project including the type of facility and its location;
- The applicant's name and address;
- The location where members of the public can access the materials; and
- The date by which one must submit a request for any additional scientific studies.

The application must be accompanied by payment of a fee or a bond, along with copies of the most recent cost estimates provided by fish and wildlife agencies. These cost estimates would have been provided during the first stage of the consultation process, and possibly updated by resource agencies later in the process if significant changes to the initial estimates were necessary.<sup>144</sup> Failure to submit either payment of the fee, or a bond, will result in rejection of the application.

If an applicant chooses to submit the application fee along with the application (as opposed to providing a bond), the amount of the fee is 50 percent of the total of all cost estimates provided by fish and wildlife agencies. Agencies will have provided the applicant with updated estimates if any substantial increase in the initial estimates was warranted. Applicants should make sure that the fee submitted with the application is based on the most recent cost estimates provided by fish and wildlife agencies.<sup>145</sup> The remaining 50 percent of the fee is paid upon completion of the project. Payment must be made by check payable to the U.S. Department of Treasury. The check must indicate that payment is for "ECPA fees."

In lieu of paying the fee, an applicant can elect to provide an unlimited term surety bond from a company on the Department of Treasury's list of companies certified to write surety bonds. A bond must be for the full amount of the fish and wildlife agencies' most recent cost estimates.

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<sup>142</sup> 18 CFR 4.32(b)(3) and (4).

<sup>143</sup> 18 CFR 4.32(b)(6).

<sup>144</sup> Relevant fee requirements are specified in 18 CFR 4.301-4.304.

<sup>145</sup> These cost estimates are described in 18 CFR 4.301(b).

## 11.1.2 Content of Exemption Application

While there is no specific application form to complete, the materials that an applicant must include in a 5 MW Exemption application are described in detail in 18 CFR 4.107, a section of the regulations governing FERC licensing and exemptions. In addition, references to materials that must be included in the application appear in 18 CFR 4.32. This section is based on those regulations.

The main elements of the application are the introductory statement, and Exhibits A, E, F, and G.<sup>146</sup> These elements are described below.<sup>147</sup> An application fee must also be submitted along with the application. The fee structure and payment process are described above in Section 116.1.1 of this guidebook.

The information included here is based on requirements specified in the regulations. However, stakeholders may request more detailed information from the applicant if it is needed to provide a sufficient basis for decision-making. Applicants should provide information that is as specific as possible in the initial application. This should help minimize the time spent responding to stakeholder information requests.

### Introductory Statement

The statement must include the following information and must adhere to the following format:

Before the Federal Energy Regulatory Commission

*Application for Exemption for Small Hydroelectric Power Project From Licensing*

[Name of applicant] applies to the Federal Energy Regulatory Commission for an exemption for [name of project], a small hydroelectric power project that is proposed to have an installed capacity of 5 megawatts or less, from licensing under the Federal Power Act.

The location of the facility is:

State or Territory: \_\_\_\_\_  
County: \_\_\_\_\_  
Township or nearby town: \_\_\_\_\_  
Stream or body of water: \_\_\_\_\_

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<sup>146</sup> The regulations call for exemption applications to include Exhibits A, E, F, and G, but do not call for any Exhibits B, C, or D. Exhibits B, C, and D are required for certain types of license applications (see Licensing Handbook, p. 2-12), but not for exemption applications.

<sup>147</sup> In addition to those components described, applications must include: a) a list identifying Native American tribes affected by the project (18 CFR 4.107(a)); b) a draft tendering notice (18 CFR 4.32(b)(7)); and c) an appendix providing evidence that the applicant holds real property interest in the land necessary to qualify as eligible for the exemption (18 CFR 4.107(a)).

The exact name and business address of each applicant are:

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The exact name and business address of each person authorized to act as agent for the applicant in this application are:

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[Name of applicant] is [specify, as appropriate: a citizen of the United States or other identified nation; an association of citizens of the United States or other identified nation; a municipality; a state; or a corporation incorporated under the laws of (specify the United States or the state or nation of incorporation), as appropriate].

## **Exhibit A: Description of Facility**

Exhibit A must describe the hydroelectric facility with appropriate references to Exhibits F and G (described below). To the extent feasible, the information in this exhibit may be submitted in tabular form. The following information must be included:

- A brief description of any existing dam and impoundment proposed to be utilized by the small hydroelectric power project and any other existing or proposed project works and appurtenant facilities, including intake facilities, diversion structures, powerhouses, primary transmission lines, penstocks, pipelines, spillways, and other structures. The sizes, capacities, and construction materials of those structures should also be described.
- The number of existing and proposed generating units at the project, including auxiliary units, the capacity of each unit, and plans, if any, for future units. Any plans for retirement or rehabilitation of existing generating units should also be described.
- The type of each hydraulic turbine of the small hydroelectric power project.
- A description of how the plant is to be operated (run-of-river or peaking).
- A graph showing flow duration curve for the project. Identify stream gauge(s) and period of record used. If a synthetic record is utilized, provide details concerning its derivation.

If the units are sized to use less than the full amount of streamflow available at the site, include an explanation of the rationale for this decision. If an applicant does not plan to make full use of the streamflow available at a site, FERC would like to know the rationale for the decision. If an applicant cannot provide justification suitable to FERC, FERC may determine that the full volume of streamflow available at the location should remain intact for another applicant that wishes to fully utilize the resource. The maximum volume of streamflow that exists at the site 25% of the time is used as the threshold for determining whether an

explanation is warranted; if the hydraulic capacity of the proposed generating unit(s) plus the minimum flow requirements is less than the stream flow that is exceeded 25 % of the time, rationale for underutilizing the available streamflow must be provided.<sup>148</sup>

- Estimations of:
  - The average annual generation in kilowatt hours;
  - The average and design head of the power plant and the methodology used to determine this value;<sup>149</sup>
  - The hydraulic capacity of each turbine of the plant (flow through the plant) in cubic feet per second; and
  - The number of surface acres of the man-made or natural impoundment used, if any, at its normal maximum surface elevation and its net and gross storage capacities in acre-feet.
- The planned date for beginning and completing the proposed construction or development of generating facilities.
- A description of the nature and extent of any repair, reconstruction, or other modification of a dam that would occur in association with construction or development of the proposed small hydroelectric power project, including a statement of the normal maximum surface area and normal maximum surface elevation of any existing impoundment before and after construction.

## **Exhibit E: Environmental Report**

This exhibit is an Environmental Report. The reporting included in Exhibit E is a product of the pre-filing consultation process described in this guidebook, and detailed in 18 CFR 4.38.<sup>150</sup>

An applicant should consult with FERC staff to gauge the level of detail that should be included in the reporting in Exhibit E. Generally, the level of detail should reflect the scale of the project. Exhibit E must include the following information, commensurate with the scope of operations and environmental impact of the facility:

- A description of the facility’s environmental setting, including vegetative cover, fish and wildlife resources, water quality and quantity, land and water uses, recreational use, historical and archeological resources, and scenic and aesthetic resources. The report must give special attention to endangered or threatened plant and animal species, critical habitats, and sites eligible for or included on the National Register of Historic Places. The applicant may obtain

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<sup>148</sup> This assumes that the required minimum flow is not usable for power generation.

<sup>149</sup> The regulations state that an applicant should provide information on the “average head.” However, applicants are encouraged to provide a measured value if possible, as well as the methodology for calculating the head. In general, providing well documented values up front should help minimize the time spent responding to stakeholder data requests later in the process.

<sup>150</sup> Unless otherwise noted, the Exhibit E requirements described here are drawn from the regulatory requirements outlining the application content requirements for 5 MW Exemption applications, 18 CFR 4.107.

assistance in the preparation of this information from State natural resources agencies, the State historic preservation officer, and from local offices of Federal natural resources agencies. See Appendix A to this guidebook for a list of relevant Oregon resource agencies.

- A description of the expected environmental impacts resulting from the proposed construction or development and proposed operation of the small hydroelectric power project, including any impacts from any proposed changes in the capacity and mode of operation of the project if it is already generating electric power. The Exhibit should also include an explanation of the specific measures proposed by the applicant, the agencies consulted, and others to protect and enhance environmental resources and values and to mitigate adverse impacts of the project on such resources.
- Documentation that the applicant has fulfilled the pre-filing consultation requirements.<sup>151</sup> The regulations state that this documentation must include a summary of the consultation process, including a list of all stakeholders with which the applicant consulted, copies of all correspondence or other proof of consultation with the stakeholders, and minutes or other records from the public meeting. The Exhibit must also include letters from stakeholders containing comments and recommendations regarding the project, notice of any disagreements with stakeholders, etc. If the applicant contacted stakeholders seeking participation in the consultation process and certain stakeholder responded that they had no comment, record of that correspondence should be included as well. For projects with limited environmental impacts, documentation from a lawyer or notary that the stakeholders have been served the required files may suffice.
- Any additional information the applicant considers important.

## Exhibits F and G

Exhibit F is a set of design drawings for the hydroelectric project facilities, and Exhibit G is a map of the project site. Maps and drawings submitted with applications must meet detailed specifications. Specifications pertaining to all maps and drawings, as well as those specific to each exhibit, are described below.

### 11.1.3 Maps and Drawings

Maps and drawings must conform to detailed specifications.<sup>152</sup> A set of overall specifications addresses topics such as the materials on which the maps and drawings must be printed, the formatting requirements the printed documents must adhere to, the scale at which printed copies should be presented, etc. These specifications are summarized first in this section. Additional requirements exist for each of the two exhibits with visual content, Exhibits F and G. These requirements focus primarily on the content of the maps and drawings. They are summarized later in this section.

The requirements for maps and drawings are detailed and rigorous. Applicants should seek the assistance of professionals well versed with Computer Assisted Drawing (CAD) and/or Geographic Information Systems (GIS). This will help ensure submittal of maps and drawings that comply with FERC requirements.

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<sup>151</sup> 18 CFR 4.38(f).

<sup>152</sup> 18 CFR 4.39.

## Overall Specifications for All Maps and Drawings

All maps and drawings must conform to the specifications provided in 18 CFR 4.39, a section of the regulations governing licensing and exemptions. These specifications are summarized here.

- Each original map or drawing must consist of a print on silver or gelatin 35mm microfilm mounted on Type D (3 1/4" by 7 3/8") aperture cards.
- Full-sized prints of maps and drawings must be on sheets no smaller than 24 by 36 inches and no larger than 28 by 40 inches.
- A space five inches high by seven inches wide must be provided in the lower right hand corner of each sheet. The upper half of this space must bear the title, numerical and graphical scale, and other pertinent information concerning the map or drawing. The lower half of the space must be left clear.
- Exhibit G drawings must be stamped by a registered land surveyor.
- If the drawing size specified in this paragraph limits the scale of structural drawings (exhibit F drawings) described in paragraph (c) of this section, a smaller scale may be used for those drawings.
- Potential applicants or licensees may be required to file maps or drawings in electronic format as directed by the Commission.
- Each map must have a scale in full-sized prints no smaller than one inch equals 0.5 miles for transmission lines, roads, and similar linear features, and no smaller than one inch equals 1,000 feet for other project features, including the project boundary. Where maps at this scale do not show sufficient detail, large scale maps may be required.
- Maps must show:
  - True and magnetic meridians;
  - State, county, and town lines; and
  - Boundaries of public lands and reservations of the United States,<sup>153</sup> if any.
    - Surveys of public lands may be obtained from the U.S. Bureau of Land Management, or examined in a local land survey office.
    - If a public land survey is available, the maps produced by the applicant must show all lines of that survey that cross the project area, and all official subdivisions of sections for the public lands and reservations, including lots and irregular tracts, as designated on the survey.
    - To the extent that a public land survey is not available for public lands and reservations of the United States, the applicants' maps must show the township lines, and other significant land area demarcations that are recognized by the Federal agency that administers those lands.
- Drawings depicting details of project structures must have a scale in full-sized prints no smaller than:
  - One inch equals 50 feet for plans, elevations, and profiles; and
  - One inch equals 10 feet for sections.
- Each map or drawing must be drawn and lettered to be legible when it is reduced to a print that is 11 inches on its shorter side. Following notification to the applicant that the application

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<sup>153</sup> See 16 U.S.C. 796 (1) and (2).

- has been accepted for filing,<sup>154</sup> prints reduced to that size must be bound in each copy of the application which is required to be submitted to the Commission or provided to any person, agency, or other entity.
- Exhibit F drawings showing project location information and details of project structures must be filed in accordance with FERC's instructions on submission of Critical Energy Infrastructure Information (CEII).<sup>155</sup> If public disclosure of details about a project's location or design would pose a safety risk, an applicant can submit a written request that certain information about the project receive privileged CEII treatment. Under those circumstances, the critical information would be kept in a separate file that would not be made available to the public.

## **Exhibit F: Design Drawings<sup>156</sup>**

Exhibit F is a set of design drawings showing the structures and equipment that will make up the small hydroelectric facility. An applicant can submit the drawings even if they are preliminary in nature, as long as they indicate this in the application materials. Final drawings showing precise plans for the proposed structures would be submitted prior to beginning construction of the project. The final drawings would need a professional engineer's stamp.

The drawings included in this exhibit must show all major project structures in sufficient detail to provide a full understanding of the project, including:

- Plans (overhead view);
- Elevations (front view);
- Profiles (side view); and
- Sections (representations of the equipment as it would appear if cut by a plane, showing its internal structure).

The application may need to submit a Supporting Design Report that provides information to demonstrate that existing and proposed structures are safe and adequate to fulfill their stated functions. Contact FERC staff to determine if this report is necessary for your project. If required, the report must include the following information:

- An assessment of the suitability of the site and the reservoir rim stability. This assessment must be based on geological and subsurface investigations, including investigations of soils and rock borings and tests for the evaluation of all foundations and construction materials sufficient to determine the location and type of dam structure suitable for the site.
- Copies of boring logs, geology reports, and laboratory test reports.
- An identification of all borrow areas and quarry sites and an estimate of required quantities of suitable construction material.

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<sup>154</sup> See 18 CFR 4.31(c).

<sup>155</sup> See 18 CFR 388.112 and 388.113.

<sup>156</sup> 18 CFR 4.41(g).

- Stability and stress analyses for all major structures and critical abutment slopes under all probable loading conditions, including seismic and hydrostatic forces induced by water loads up to the Probable Maximum Flood as appropriate.
- The bases for determination of seismic loading and the Spillway Design Flood in sufficient detail to permit independent staff evaluation.

The requirements summarized here are from 18 CFR 4.41(g), a section of the regulations governing FERC licensing and exemptions.<sup>157</sup> Applicants should refer to the regulations for complete details.

## **Exhibit G<sup>158</sup>**

Exhibit G is a map of the project. FERC representatives report that the maps submitted along with an exemption application are often insufficient and can delay the exemption application process. Therefore, applicants should pay close attention to the requirements summarized here. These requirements are taken from 18 CFR 4.41(h), a section the regulations governing FERC licensing and exemptions. Applicants should refer to the regulations for complete details.

- The map must show:
  - (1) *Location of the project and principal features.* The map must show the location of the project as a whole, with reference to the affected stream or other body of water. It should also show any nearby town or other permanent monuments or objects, such as roads, transmission lines, or other structures. The map must also show the relative locations and physical interrelationships of the principal project components.
  - (2) *Project boundary.* The map must show a project boundary. This boundary must enclose all project components and other features described in Exhibit A, as well as lands necessary for safe and efficient operation and maintenance of the facility, and other specified project purposes such as recreation and protection of environmental resources.<sup>159</sup> If the boundary is on land covered by a public land survey, sufficient references must be shown on the map to allow for accurate platting of the boundary relative to lines of the public land survey. If the lands are not covered by a public land survey, the best possible representation of the boundary location must be provided, showing known features such as roads, intersections, and streams.

Presentation of the project boundary on the map(s) must adhere to the following specifications, as appropriate:

- (i) *Impoundments.* The preferred means of presenting the boundary around an impoundment is to use contour lines, including contour elevation.

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<sup>157</sup> 18 CFR 4.41(g).

<sup>158</sup> Actual requirements in 18 CFR 4.41(h) have been edited here for simplicity, and to reflect those that are relevant to a 5 MW Exemption application. Applicants should consult FERC and seek legal advice to clarify specific requirements as they may relate to the applicant's project.

<sup>159</sup> Consult FERC, and the definitions related to "small hydroelectric power project" to clarify how the boundaries of a specific project would be defined. 18 CFR 4.30(22 and 29).

Other acceptable methods are either to show specified courses and distances (metes and bounds), or to show lines upon or parallel to the lines of the survey. The applicant can also use a combination of these methods. The boundary must be located no more than 200 feet from the exterior margin of the reservoir.

- (ii) *Continuous Features.* The boundary around linear features such as access roads, transmission lines, and conduits may be described by specified distances from center lines or offset lines of the survey. The width of these corridors should generally not exceed 200 feet.
- (iii) *Non-Continuous Features.* The boundary around non-continuous features such as dams, spillways, and powerhouses must be shown using contour lines, specified courses and distances (metes and bounds), or lines upon or parallel to the lines of the survey. The applicant can also use a combination of these methods. The boundary around non-continuous features should only include the land that is necessary for safe and efficient operation and maintenance of the project.

(3) *Federal Lands.* Any public lands and reservations of the United States that fall within the project boundary must be identified on the map. These lands must be identified in the following manner:

- (i) By legal subdivision of a public land survey, if applicable. This could consist of a protraction of the relevant township(s) and section lines. If no public land survey exists for the lands of a project, the map should show the location of the Federal lands according to the distances and directions from fixed Federal survey monuments or bench marks.
- (ii) The Federal agency, identified by symbol or legend, that maintains or manages each identified subdivision of the public land survey within the project boundary.

(4) *Non-Federal Lands.* The map must identify by legal subdivision:

- (i) Lands *owned* by the applicant and lands that the applicant plans to acquire; and
  - (ii) Lands over which the applicant has acquired or plans to acquire *rights* to occupancy and use. This includes *rights* acquired by easement or lease.
- The applicant must provide the project boundary data in a geo-referenced electronic format—such as ArcView shape files, GeoMedia files, MapInfo files, or any similar format.
  - The electronic boundary data must be accurate to  $\pm 40$  feet, in order to comply with the National Map Accuracy Standards for maps at a 1:24,000 scale (the scale of USGS quadrangle maps).
  - The electronic Exhibit G data must include a text file describing the map projection used and the map datum.
  - Three sets of the maps must be submitted on separate compact disks or other appropriate electronic media.

- If more than one sheet is used for the paper maps, the sheets must be numbered consecutively, and each sheet must bear a small insert sketch showing the entire project and indicate that portion of the project depicted on that sheet. Each sheet must contain a minimum of three known reference points, such as a road, intersection or stream. The latitude and longitude coordinates, or state plane coordinates, of each reference point must be shown.
- If at any time after the application is filed there is any change in the project boundary, the applicant must submit, within 90 days following the completion of project construction, a final Exhibit G showing the extent of such changes.

## **12 5MW EXEMPTION CONCLUSION**

The process of obtaining a 5 MW Exemption is less involved than that of obtaining a license. Nonetheless, the application process is still complex and requires close coordination with stakeholders and FERC representatives.

As noted earlier, 5 MW Exemption applications can take 12 to 18 months to process. If applicants adhere to the requirements described in this guidebook and in the regulations, the duration of the application process can be minimized. Close coordination with FERC staff and stakeholders will also help limit the length of time it takes to process an application.

# 13 APPENDIX A: CONSULTATION CONTACTS FOR OREGON

Source: <http://www.ferc.gov/industries/hydropower/enviro/consultlist.aspx?State=Oregon>

Agency Type	Agency	Agency Con't	Title	Region	Address	Phone	Email	Web Address
FED	Bureau of Indian Affairs	U.S. Department of the Interior	Regional Director	Northwest Region	911 NE 11th Avenue Portland OR 97132	505.231.6702		
FED	Federal Energy Regulatory Commission	Division of Dam Safety and Inspections	Regional Engineer	Portland Regional Office	805 SW Broadway Fox Tower - Suite 550 Portland OR 97205	503.552.2741		
S	Oregon Parks & Recreation Department		SHPO		725 Summer Street NE Suite C Salem OR 97301			
FED	U.S. Army Corps of Engineers		Division Commander	Northwestern Division	P.O. Box 2870 Portland OR 97208-2870	503.808.3700		<a href="http://www.nwd.usace.army.mil/">http://www.nwd.usace.army.mil/</a>
FED	U.S. Army Corps of Engineers		District Engineer	Portland District Office	P.O. Box 2946 Portland OR 97208-2946	503.808.4500		<a href="http://www.nwp.usace.army.mil/">http://www.nwp.usace.army.mil/</a>
FED	U.S. Bureau of Land Management	U.S. Department of the Interior	State Director	Oregon State Office	P.O. Box 2965 Portland OR 92708-3420	503.808.6002		
FED	U.S. Department of Agriculture - Forest Service		Regional Forester	Pacific Northwest Region - 6	P.O. Box 3623 Portland OR 97208-3623	503.808.2468		<a href="http://www.fs.fed.us/r6/">http://www.fs.fed.us/r6/</a>

Agency Type	Agency	Agency Con't	Title	Region	Address	Phone	Email	Web Address
FED	U.S. Fish and Wildlife Service	Klamath Falls Field Office	Field Supervisor	Region 8 - California and Nevada	1936 California Avenue Klamath Falls OR 97601	541.885.8481		
FED	U.S. Fish and Wildlife Service	Oregon Field Office	Field Supervisor	Region 1 - Pacific	2600 Southeast 98th Avenue Suite 100 Portland OR 97266-1398	503.231.6179		
FED	U.S. Fish and Wildlife Service		Regional Director	Region 1 - Pacific	911 NE 11th Avenue Portland OR 97232-4181	503.231.6120		<a href="http://www.fws.gov/pacific/">http://www.fws.gov/pacific/</a>
S	Office of the Attorney General	Justice Building	Attorney General		1162 Court Street NE Salem OR 97301	503.378.4732		<a href="http://www.doj.state.or.us">http://www.doj.state.or.us</a>
S	Office of the Governor		Governor		900 Court Street NE Room 254 Salem OR 97301-4047	503.378.3111		
S	Oregon Department of Agriculture		Director		635 Capitol Street NE Salem OR 97301-2532	503.986.4550	<a href="mailto:info@oda.state.or.us">info@oda.state.or.us</a>	<a href="http://www.oregon.gov/ODA/">http://www.oregon.gov/ODA/</a>
S	Oregon Department of Environmental Quality	Water Quality Division	Director		811 SW Sixth Avenue Portland, OR 97214	503-229-5696	<a href="mailto:deq.info@deq.state.or.us">mailto:deq.info@deq.state.or.us</a>	<a href="http://egov.oregon.gov/OWRD/">http://egov.oregon.gov/OWRD/</a>

Agency Type	Agency	Agency Con't	Title	Region	Address	Phone	Email	Web Address
S	Oregon Department of Fish and Wildlife	Director's Office	Director		3406 Cherry Avenue NE Salem OR 97303	503.947.6044	<a href="mailto:odw.info@state.or.us">odw.info@state.or.us</a>	<a href="http://www.dfw.state.or.us/">http://www.dfw.state.or.us/</a>
S	Oregon Department of Forestry		State Forester		2600 State Street Salem OR 97310	503.945.7211	<a href="mailto:information@odf.state.or.us">information@odf.state.or.us</a>	<a href="http://egov.oregon.gov/ODF/">http://egov.oregon.gov/ODF/</a>
S	Oregon Dept of Land Conservation and Development		Director		635 Capitol Street NE Suite 150 Salem OR 97310-2540	503.373.0500		<a href="http://www.lcd.state.or.us/">http://www.lcd.state.or.us/</a>
T	Hells Canyon Preservation Council		Conservation Director		PO Box 2768 La Grande OR 97850	541.963.3950	<a href="mailto:brett@hellscanyon.org">brett@hellscanyon.org</a>	<a href="http://www.hellscanyon.org/">http://www.hellscanyon.org/</a>
T	Klamath General Council		Chairman		P.O. Box 436 Chiloquin OR 97624-0436			
T	Umpqua Watersheds		Executive Director		PO Box 101 Roseburg OR 97470	541.672.7065	<a href="mailto:penny@umpqua-watersheds.org">penny@umpqua-watersheds.org</a>	<a href="http://www.umpqua-watersheds.org">http://www.umpqua-watersheds.org</a>
T	Coquille Indian Tribe		Chairman		P.O. Box 783 North Bend OR 97549			
T	Siletz Tribal Council		Chairman		P.O. Box 549 Siletz OR 97380-0549			
T	Cow Creek Government Offices		Chairperson		2371 N.E. Stevens Suite 100 Roseburg OR 97470-1338			

Agency Type	Agency	Agency Con't	Title	Region	Address	Phone	Email	Web Address
T	The Institute for Fisheries Resources		Program Director		PO Box 11170 Eugene OR 974403370	541.689.2000	<a href="mailto:fish1ifr@aol.com">fish1ifr@aol.com</a>	<a href="http://www.ifrfish.org/">http://www.ifrfish.org/</a>
T	Burns Paiute Tribe General Council		Chairman		H.C. 71 100 Pasigo Street Burns OR 97720			
S	Oregon Natural Resources Council		Administrator		5825 N. Greely Avenue Portland OR 97217	503.283.6343	<a href="mailto:dh@onrc.org">dh@onrc.org</a>	<a href="http://www.oregonwild.org/">http://www.oregonwild.org/</a>
S	Oregon State Parks and Recreation Department	Officer of the Director	Director		725 Summer Street NE Suite C Salem OR 97301	503.986.0719	<a href="mailto:park.info@state.or.us">park.info@state.or.us</a>	<a href="http://www.oregon.gov/OPRD/">http://www.oregon.gov/OPRD/</a>
NGO	Pacific Coast Federation of Fishermen's Associations		Northwest Regional Director		P.O. Box 11170 Eugene OR 97440-3370	541.689.2000		<a href="http://www.pcffa.org">http://www.pcffa.org</a>
T	Confederated Tribes of the Grand Ronde Community of Oregon		Chairperson		9615 Grand Ronde Road Grand Ronde OR 97347-0038			
T	Confederated Tribes of Coos Lower Umpqua and Siuslaw Indians		Chairman		1245 Fulton Avenue Coos Bay OR 97420			

Agency Type	Agency	Agency Con't	Title	Region	Address	Phone	Email	Web Address
T	Confederated Tribes of the Umatilla Indian Reservation		Chairman		P.O. Box 638 Pendleton OR 97801-0638			
T	Confederated Tribes of the Umatilla Indian	Reservation			P.O. Box 638 Pendleton OR 97801	541.276.3447		
T	Confederated Tribes of the Umatilla Indian Reservation				P.O. Box 638 Pendleton OR 97801			
T	Confederated Tribes of the Warm Springs Reservation - Tribal Council		Chairman		P.O. Box C Warm Springs OR 97761-3001			